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**United States Circuit Court of Appeals**  
**FOR THE NINTH CIRCUIT**

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**SWAYNE & HOYT, Inc., a Corporation**  
**PLAINTIFF IN ERROR**

**vs.**

**GUSTAV BARSCH**  
**DEFENDANT IN ERROR**

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**Transcript of Record**

**Upon Writ of Error to the District Court of the**  
**United States for the District of Oregon**

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**Filed**

**OCT 31 1914**

**F. D. Monckton,**  
**Clerk.**

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No.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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IN THE  
**District Court of the United States**  
**FOR THE DISTRICT OF OREGON**

**November Term, 1913**

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GUSTAV BARSCH,  
*Plaintiff,*

*v.*

SWAYNE & HOYT, INC.,  
a Corporation,  
*Defendant.*

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Be it remembered, that on the 21st day of January, 1913, there was duly filed in the District Court of the United States for the District of Oregon, a Complaint, in words and figures as follows, to wit:

**COMPLAINT**

Plaintiff above named, for cause of action against the defendant above named, complains and alleges:

I.

That said defendant now is and was during all the times herein mentioned, a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of California, and as such, by and through its agents, was doing business in the City of Portland, Multnomah County, Oregon, during said time.

## II.

That said plaintiff, with others, on or about the 31st day of March, 1913, about 7:30 p. m. of said day, was employed by and was working for Swayne & Hoyt, Inc., said defendant, in assisting to unload structural iron beams about 18 feet long and weighing about 800 pounds each, from the steamship "Camino" onto a truck on the dock, and, after the same were landed upon said truck, in taking them away and storing them on the dock.

## III.

That during the times herein mentioned, said steamship was berthed at a dock in the Willamette River, in Portland, Multnomah County, Oregon, and that said steamship and its tackle, apparel, furniture and machinery hereinafter referred to and mentioned, were in possession of and controlled by said defendant for the purpose of unloading said iron; and while the defendant and said plaintiff were unloading said structural iron beams, they were doing it by means of a double winch which was operated by steam power and which was located upon the deck of said ship, by an engineer and a foreman in the employ of said defendant, booms, cables, falls, hooks, and slings. That in unloading said vessel, said sling and fall were fastened, by means of a hook, to each end of said structural iron beams, which said sling and fall were fastened or connected with a cable which wound around the

drum of said steam winch, and then said beams were raised by means of said steam winch and apparatus from the deck of said steamship into the air and lowered over the rail of said ship down to and onto a truck on said dock, where said plaintiff and his fellow servants would receive, unloosen and place said beams upon said truck, and then remove them out of the way for the next load, and store them away upon said dock. That said work in which said defendant was engaged involved a risk and danger to the life and limb of said plaintiff and his fellow employees. That from the position he occupied on said vessel, the engineer operating said steam winch was unable to see plaintiff and the men while they were working on the dock at the time of the accident hereinafter set forth. That for the purpose of unloading said ship properly, safely and without risk or danger to the men working on the dock, it was necessary and the duty of defendant to employ a hatch tender or signal man to signal from the men working on the dock to the engineer operating the steam winch.

#### IV.

That at said time and place, said plaintiff and his fellow workmen had received upon a truck upon said dock one of said iron beams, and said plaintiff, whose duty required him to so do, took hold of said beam, which was unhooked on one end, for the purpose of steadying it and in order that the same could be successfully released from

said hook, cable and sling, when the foreman of said defendant, carelessly and negligently and in his haste to unload said ship, gave the signal to engineer to go ahead before he was notified by the men who were handling the load on the truck, to do so, which the said engineer did without any notice to plaintiff or his fellow workmen, and said beam was suddenly and unexpectedly raised and with great force and violence struck plaintiff on the left knee and knocked him down, cut a chunk out of the index finger of his left hand, and permanently injured and bruised his knee joint and the tendons and ligaments thereof and the bone of the knee, in consequence of which said plaintiff suffered great pain and mental anguish, rendering him unfit to work, and will so suffer in the future, and he is permanently incapacitated from earning a living and following his vocation, to his damage in the sum of \$10,000.00.

V.

That it was the duty of the defendant to furnish said plaintiff a safe place to work and to keep the same in a reasonably safe condition, and to furnish a system of communication by means of signals, so that at all times there might be prompt and efficient communication between the employees working on the dock and the engineer who was operating the steam winch, which it was necessary to do for the safety of plaintiff and the men working with him.

## VI.

That said injuries were particularly caused by the negligence of defendant in failing to furnish plaintiff a safe place to work and in failing to keep same in a safe condition, and in failing to furnish a system of communication by means of signals at said time and place so that at all times there might be prompt and efficient communication between the employees working on the dock and the engineer operating the steam winch on the deck of said ship, which it was necessary to do for the safety of plaintiff and the men working on the dock, in that said defendant failed to furnish a hatch tender or signal man to communicate signals between the men working on the dock and said engineer, and a person to notify or signal the engineer when to lower or raise the load or land the load, and to signal the engineer when and how to raise, lower or hold the load to prevent the same from striking or injuring said plaintiff and the men working on the dock, and to communicate the signals from the men working on the dock to said engineer who was operating the steam winch; and also on account of the foreman's signaling the engineer to go ahead before he was notified by the men who were handling the load on the truck to do so; and also for the reason that said engineer was so stationed at the time of said accident that he was unable to see the men working with the load on the dock and to know when to go ahead or let go on the load.

## VII.

That on the 31st day of March, 1913, plaintiff was a strong, healthy, active man, aged 49 years, working as a longshoreman and earning more than \$100.00 a month, and had a life expectancy of 21.63 years.

Wherefore, plaintiff demands judgment against said defendant for the sum of \$10,000.00 and the costs and disbursements of this action.

Giltner & Sewall,  
Attorneys for Plaintiff.

Duly verified.

Duly filed.

And afterwards, to-wit, on the 10th day of February, 1914, there was duly filed in said court, an answer in words and figures as follows, to-wit:

**ANSWER**

(Title of Court and Cause.)

Comes now Swayne & Hoyt, Inc., defendant above named, and for answer to plaintiff's complaint admits, denies and alleges as follows:

## I.

Admits the allegations of Paragraph I.

## II.

Denies the allegations of Paragraph II.

## III.

Admits that during the times mentioned in plaintiff's complaint the steamship "Camino"

was berthed at a dock in the Willamette River in Portland, Multnomah County, Oregon, and denies all knowledge or information sufficient to form a belief as to the methods used in unloading the said steamship and the cargo therefrom, and the methods used by the plaintiff and his fellow servants in receiving and placing the said steel beams about the dock; and otherwise defendant denies each and every allegation of Paragraph III.

#### IV.

Denies all information and knowledge sufficient to form a belief as to the allegations contained in Paragraph IV, and the defendant specifically denies that plaintiff is permanently incapacitated from obtaining a living, or that plaintiff has suffered great pain or mental anguish, or that plaintiff has suffered serious injuries of any kind whatsoever, or damage in the sum of ten thousand dollars, or any other sum.

#### V.

Denies the allegations of Paragraph V.

#### VI.

Denies each and every allegation of Paragraph VI.

#### VII.

Denies all knowledge or information sufficient to form a belief as to the allegations of Paragraph VII.

Wherefore, defendant having fully answered plaintiff's complaint, demands judgment against

plaintiff for its costs and disbursements in this cause incurred.

Snow & McCamant, and  
Geo. B. Guthrie,  
Defendant's Attorneys.

Duly verified.

Duly filed.

And afterwards, to-wit, on the 12th day of May, 1914, there was duly filed in said court, a verdict in words and figures as follows, to-wit:

### **VERDICT**

(Title of Court and Cause.)

We, the jury in the above entitled action, find in favor of the plaintiff, Gustav Barsch, and against the defendant, Swayne & Hoyt, Inc., a corporation, and assess the damages in favor of plaintiff in the sum of fourteen hundred dollars (\$1400.00).

Signed May 12, 1914.

John Hall,

Duly filed.

Foreman.

And afterwards, to-wit, on Tuesday, the 12th day of May, 1914, the same being the 62nd judicial day of the regular March term of said court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

### **JUDGMENT**

(Title of Court and Cause.)

Now, at this day, come the parties hereto by their counsel as of yesterday, and the jury im-

paneled herein being present and answering to their names, the trial of this cause is resumed and the jury having heard the evidence adduced, the arguments of counsel and the charge of the court, retire in charge of the proper sworn officers to consider of their verdict; and thereafter said jury return into court the following verdict: "We, the jury in the above entitled action, find in favor of the plaintiff, Gustav Barsch, and against the defendant, Swayne & Hoyt, Inc., a corporation, and assess the damages in favor of plaintiff in the sum of fourteen hundred dollars (\$1400.00), John Hall, Foreman, Signed May 12, 1914," which verdict is received by the court and ordered to be filed; whereupon it is considered that said plaintiff do have and recover of and from said defendant the said sum of \$1400.00, together with its costs and disbursements herein taxed at \$60.00, and that execution issue therefor.

And afterwards, to-wit, on the 26th day of May, 1914, there was duly filed in said court, a motion for new trial in words and figures as follows, to-wit:

### **MOTION FOR NEW TRIAL**

(Title of Court and Cause.)

Comes now the defendant, Swayne & Hoyt, Inc., and moves the court for an order setting aside the judgment and verdict heretofore rendered in this cause and granting unto the defendant, Swayne & Hoyt, Inc., a new trial, which said motion is based on the following reasons:

## I.

On account of surprise which could not have been guarded against by the exercise of ordinary prudence on the part of defendant in the matter of testimony offered in evidence by the plaintiff as is more particularly shown by the affidavit of Zera Snow of defendant's attorneys, which affidavit is hereto appended and made a part of this motion.

## II.

On account of the insufficiency of the evidence to justify the verdict and for the further reason that the said verdict is against the law.

## III.

On account of excessive damages granted by the jury in its verdict, which damages appear to have been given under the influence of passion or prejudice.

## IV.

On account of errors in law occurring at the trial and excepted to by the defendant.

Snow & McCamant, and  
Geo. B. Guthrie,  
Attorneys for Defendant,  
Swayne & Hoyt, Inc.

And afterwards, to-wit, on Monday, the 8th day of June, 1914, the same being the 85th judicial day of the regular March term of said court; present: the Honorable Robert S. Bean, United

States District Judge presiding, the following proceedings were had in said cause, to-wit:

**ORDER DENYING MOTION FOR  
NEW TRIAL**

(Title of Court and Cause.)

This cause was heard upon the motion of the defendant for a new trial herein and was argued by Mr. R. R. Giltner, of counsel for the plaintiff, and by Mr. Zera Snow and Mr. George B. Guthrie, of counsel for the defendant; on consideration whereof, it is ordered and adjudged that said motion be and the same is hereby denied; whereupon on motion of said defendant, it is ordered that defendant be, and it is hereby, allowed thirty days from this date within which to prepare and submit a bill of exceptions.

And afterwards, to-wit, on the 18th day of August, 1914, there was duly filed in said court, a Petition for Writ of Error, with a bond for the prosecution of said writ to effect in the sum of two thousand dollars (\$2,000.00), the bond being signed by Swayne & Hoyt, Inc., as principal, and Aetna Indemnity Company as the surety thereon. Writ of error duly issued and citation duly issued and served.

And afterwards, to-wit, on the 18th day of August, 1914, there was duly filed in said court, an Assignment of Errors in words and figures as follows, to-wit:

**ASSIGNMENT OF ERRORS**

(Title of Court and Cause.)

Comes now the defendant in this cause, and the plaintiff in error, upon the writ of error proposed to be sued out for the review by the United States Circuit Court of Appeals for the Ninth Circuit, of the judgment entered herein in favor of the plaintiff and against the defendant, and presents and files the following assignment of errors upon which the defendant will rely in the Appellate Court on the prosecution of the said writ:

## I.

By the uncontradicted evidence in the cause *Swayne & Hoyt, Inc.*, was the managing agent only of the steamship "Camino," and the court erred in refusing to give the instructions to the jury requested by the defendant to return a verdict for the defendant.

## II.

The court erred in refusing to give the following instruction to the jury requested by the defendant:

"It is charged in the plaintiff's complaint that the accident which brought about the alleged injuries to the plaintiff arose by the action of the foreman of the defendant, who it is said carelessly and negligently, and in his haste to unload the ship, gave the signal to the engineer to go ahead before this foreman was notified by the plaintiff or his co-workmen, who were handling

the load on the truck, to do so, and that the engineer operating the winch on the vessel, without notice to the plaintiff, obeyed this signal of the foreman, in consequence of which plaintiff was injured. I charge the jury that the foreman in question and the engineer operating the winch on the vessel were fellow servants of the plaintiff, and for any negligence of the foreman in prematurely giving, if he did prematurely give, the signal to the winch man, the plaintiff cannot recover in this action.”

### III.

The court erred in refusing to give the following instruction to the jury requested by the defendant:

“The complaint charges among other things that by means of the manner in which the work of the unloading of the steamer ‘Camino’ was conducted, and the sudden and unexpected raising of the beam which the plaintiff with other workmen was engaged in landing from the vessel, that plaintiff was struck on the knee and was permanently injured and bruised in the knee joint, and in the tendons and ligaments thereof and the bone of the knee. I charge the jury that the burden of proof is upon the plaintiff to establish by preponderance of the evidence the permanent injuries claimed, and unless the jury can say by a fair preponderance of all of the evidence in the case that there is a permanent injury then the jury should conclude that the plaintiff was not permanently injured, and if you find for the

plaintiff no damages should be returned for any permanent injury.”

#### IV.

The court erred in applying as the law of the case the Employers' Liability Law of Oregon, and in charging to the jury in the course of the charge to the jury that the state's statutes of the State of Oregon required that all machinery other than that operated by hand power should, whenever necessary for the safety of persons employed in or about the same, or for the safety of the general public, be provided with a system of communication by means of signals so that at all times there may be prompt and efficient communication between employees or other persons and the operator of the motive power, and that a failure to so provide would be negligence within the state's statutes of the State of Oregon, and would entitle the plaintiff to recover, and that if through negligence in giving a signal at the time when the signal should not have been given, and on this account the injury occurred, then that the defendant, if it was operating the vessel on its own account and not as a managing agent, would be responsible under the Oregon statutes, because the Oregon statutes made the foreman or person giving such signal a representative of the master.

#### V.

The verdict and judgment are contrary to the evidence and to the instructions given by the court to the jury in that it sufficiently appeared at

the trial, and so the uncontradicted evidence was, that the defendant, Swayne & Hoyt, Inc., was the managing agent only of the steamship "Camino"; that the said vessel at the time of the accident was owned and operated by the Western Steam Navigation Company, all of the employees upon which, including the defendant, were employees of the owner of the vessel, and the defendant, Swayne & Hoyt, Inc., under the evidence, was not liable for the accident to the plaintiff, and the court erred in overruling a motion for new trial made by the defendant.

Snow & McCamant, and  
Geo. B. Guthrie,  
Attorneys for Defendant,  
Plaintiff in Error.

Duly filed.

And afterwards, to-wit, on the 25th day of August, 1914, there was duly filed in said court, as of the date of the judgment by order of the Judge sitting at the trial, a Bill of Exceptions, in words and figures as follows, to-wit:

### **BILL OF EXCEPTIONS**

(Title of Court and Cause.)

Be it remembered, that this cause came on for trial before the court and jury, a jury having been regularly impaneled to try the case, where-upon the following proceedings were had and taken in the course of the trial, the details and evidence stated below being incorporated in this

bill of exceptions by the direction of the trial judge presiding in lieu of the substance of the evidence which had been tendered.

C. D. Kennedy, a witness for the plaintiff, having been called and sworn, testified substantially as follows in answer to the questions put to him in behalf of the plaintiff and the defendant:

DIRECT EXAMINATION.

Q. Are you acquainted with Gustav Barsch, the plaintiff in this case, who is sitting over there?

A. Yes, sir.

Q. Are you acquainted with Swayne & Hoyt, Inc., a corporation, defendant in this case?

A. Yes sir, through some of the members of the firm. [1]

Q. State in what capacity you were acting for them on or about the 31st day of March, 1913, and prior thereto?

A. Local agent, Portland.

Q. State whether or not you were appointed agent and where you were appointed?

A. At San Francisco through a verbal agreement with Mr. Swayne and Mr. Moran.

Q. Mr. A. A. Moran?

A. Yes, sir.

Q. State when that was.

A. That was about the 1st of October, 1911—1912 I should say.

Q. How long did you act as agent for them?

A. Eleven months.

(Testimony of C. D. Kennedy.)

Q. For what purpose were you agent for them?

A. To act for them here in the capacity of agent in directing the movement of ships that were being run into this port under the Arrow Line.

Q. State what your duties were under that agency so far as to paying off the men and employing them and the manner in which it was done. [2]

A. Well, I as agent through my office—payment was made for all bills contracted for here by the ship that might be in port, its officers, its longshore bill, meat bills, and any bills that were contracted by the ship while in port.

Q. Did that include the bills for the payment of men who helped to load and unload the vessels?

A. Yes, sir.

Q. State whether you know of a ship called the steamship "Camino"?

A. Yes, sir.

Q. State whether or not they had any freight on that boat?

Mr. Snow: That is, you mean in March, 1913?

Q. Yes, March of that year, Mr. Kennedy.

A. Yes, freight was transported on that ship under their agency at San Francisco.

Mr. Snow: Under whose agency?

A. Swayne & Hoyt.

(Testimony of C. D. Kennedy.)

Q. State if on the 31st day of March, 1913, you understood that?

A. Yes, sir.

Q. State if you know whether Gustav Barsch was employed to work on that boat?

A. Yes, according to the payroll, and knowing that our office had him on our payroll, and paid him off.

Q. For whom did you have him on your payroll?

A. For the ship "Camino."

Q. And who else?

A. Well, Swayne & Hoyt, of course, and—Swayne & Hoyt, I accounted for the payments to them.

Q. State whether or not you transmitted to Swayne & Hoyt any money that you paid out for, and on account of the employment of Barsch and the other men who assisted in loading the steamship "Camino" on or about the 31st day of March, 1913—whether you transmitted the bill to them?

A. I accounted to them for the money paid out to those men, men that [3] were employed in working the ship.

Q. State whether or not Swayne & Hoyt repaid you?

A. Well, I made collections, and made payments for their account, and remitted or collected from the difference that might exist.

Q. How often had you done that?

A. Well, periodically. Probably once a week

(Testimony of C. D. Kennedy.)

or every ten days during the eleven months I was employed.

Q. Now, you say you made collections. Isn't it a fact they transmitted to you payment for the money you paid out for them?

A. What is that?

Q. Isn't it a fact you paid off the men who were unloading the steamship "Camino," and transmitted that to Swayne & Hoyt, and they repaid you for the money you paid out?

A. Transmitted? I can't transmit the money.

Q. I know, but you sent the account?

A. Certainly.

Q. And they repaid you?

A. In the regular accounting, I was reimbursed by them for any payments. It was their money I was paying out.

Q. Now, just tell the court and the jury the manner in which these men would be employed who would work in unloading this vessel?

A. The manner of being employed?

Q. Yes, to unload the boat—how it was done?

A. Well, I have a man in our—on Alber's wharf, Mr. Dosch, and he engages the men from longshoremen's hall for most all ships. I wouldn't say for this particular ship; probably he did. It was his custom to learn from the mate or officer of the ship, how many men he required for the ship, and Mr. Dosch knew how many men he required for the dock end of the work, and summing the two numbers of men together, he

(Testimony of C. D. Kennedy.)

called to the hall for a certain number of men that were wanted for working the ship, which was sent down, and so many men were turned over to the ship, and so many men kept on the wharf, and after the ship [4] sailed, the account of the longshore wages was made up, and sent to our office, and the men called at our office for their money, and signed their names for it.

Q. State if you remember of Gustav Barsch being injured about the 31st day of March?

A. Through his report to me.

Q. You say you remember the accident?

A. Through his report to me. Mr. Barsch reported to me that he had been injured, yes, sir.

Q. I wish you would state whether or not Mr. Barsch applied for a letter from you to Swayne & Hoyt—to give him a letter to Swayne & Hoyt?

A. Yes, sir.

Q. Did you give him a letter?

A. Yes.

Q. State if you remember whether you took him to a doctor after he returned from California, to be examined?

A. I did.

Q. At whose instance?

A. Swayne & Hoyt; that is, when I say Swayne & Hoyt, of course if I got instructions from Mr. Moran to do anything, I considered this in connection with Swayne & Hoyt.

Q. Who is Mr. Moran?

A. Well, he has charge of the shipping de-

(Testimony of C. D. Kennedy.)

partment for them, I understand. He gave me my instructions to a certain extent in connection with the movement of the ships coming up here.

Q. That is Mr. A. A. Moran?

A. Yes, sir.

Q. State then after this man was examined, whether he ever called on you again?

A. I don't remember. [5]

### CROSS-EXAMINATION.

Questions by Mr. Guthrie:

Mr. Kennedy, when you got a letter from Mr. Moran, you believed that to be the same as Swayne & Hoyt, you say?

A. Yes, sir.

Q. You are aware of the fact that Mr. Moran is also an officer and in charge of the shipping department of the Western Steam Navigation Company, aren't you?

A. I understand so. I haven't definitely known of the position he held with them.

Q. And Mr. Swayne is also an officer of the Western Steam Navigation Company?

A. Well, he is a member of Swayne & Hoyt.

Q. He is a member of Swayne & Hoyt, but I say he is also an officer of the Western Steam Navigation Company?

A. That is not known to me personally.

Mr. Giltner: I don't think that is proper cross-examination.

Mr. Guthrie: I think it is very material.

(Testimony of C. D. Kennedy.)

Court: Proceed with the examination.

Q. So if you got letters from Mr. Moran, directing the examination of this witness, he may have been representing the Western Steam Navigation Company as much as Swayne & Hoyt? Isn't that true?

A. Yes. I don't know who he represented.

Q. And if the plaintiff called at the office of Swayne & Hoyt, he would also be in the office of the Western Steam Navigation Company, would he not? You have been in those San Francisco offices, you say?

A. I have been in San Francisco, yes. I don't know—if they are agents for the Western Steam Navigation Company, their offices would be together also.

Q. They are officers; if I understand your testimony, of the Western Steam Navigation Company?

A. No, I don't know that.

Q. You say you kept these accounts and forwarded an account of these [6] voyages of these vessels to San Francisco, did you not?

A. Yes, sir.

Q. Tell us in some detail how these accounts are kept, Mr. Kennedy. That is, do you keep a Swayne & Hoyt account, and do you charge Swayne & Hoyt with disbursements at your dock, as Swayne & Hoyt, or do you charge a certain voyage or a certain vessel?

A. We did keep an account with Swayne &

(Testimony of C. D. Kennedy.)

Hoyt, and reported the accounting for each vessel separately.

Q. This particular voyage, which is the particular one on which this injury to Mr. Barsch is alleged to have occurred, is Voyage No. 12, according to the complaint, I believe. At least it appears somewhere in the papers.

Mr. Giltner: It doesn't appear in the complaint.

Mr. Snow: What is the fact now, Mr. Kennedy?

Q. Was that Voyage No. 12?

A. I can't say as to the voyage.

Q. If I were to refresh your recollection with some of your letters, could you tell?

A. Yes, sir.

Q. I show you a letter, merely for the purpose of refreshing your recollection, and ask you what voyage it was?

A. Yes, I reported this personally in connection with Camino, Voyage No. 12.

Mr. Giltner: To Swayne & Hoyt?

A. To Swayne & Hoyt.

Q. So that your record, as far as disbursements and receipts is concerned, was made up for Voyage No. 12 of the Camino, was it not?

A. Yes, sir.

Q. And receipts—you collected the ship's money for freight, did you not?

A. Yes, sir.

(Testimony of C. D. Kennedy.)

Q. And you also made the disbursements spoken of, did you not?

A. Yes, sir. [7]

Q. And you also collected such advance freights as might be prepaid?

A. Yes, sir.

Q. And the balance, if any, going either was you remitted, or if balance due you, you drew on them for that balance?

A. They remitted, or if we had enough moneys on account of other ships, it wasn't necessary to draw. If it was necessary to draw, we drew.

Q. Now, what relation, do you know, from your conversations you have had with the members of the Swayne & Hoyt Company at the time you were appointed agent that you spoke of—what relation did Swayne & Hoyt have in connection with these boats? What do they call themselves?

A. General agents for the Arrow Line.

Q. General agents for the Arrow Line?

A. Yes, sir.

Q. Now, in handling these matters, they were not the officers or owners—you knew that, did you not?

A. I didn't know that. I don't presume they were the owners. Might have been part owners.

Q. You considered them as managing agents?

A. Yes, sir.

(Testimony of C. D. Kennedy.)

Q. And as managing agents, you represented them locally in Portland?

A. Yes, sir.

Q. And all these payrolls, you spoke of, had been signed by the men working on longshoring, as well as others that were made out, they were made out on account of the steamer and the particular voyage, were they not?

A. Yes, sir.

Q. And it is equally true, is it not, Mr. Kennedy, that these payrolls made out, show you had paid out, and the men had received on account of the steamer Camino's owners, and not on account of the managing agent. Isn't that true? I will show you one.

A. We had a regular form to use.

Q. Let me show you one, and ask you if this document I show you is one [8] of the forms you refer to?

A. Yes, sir. That is the form we used for paying longshoremen and taking their receipts.

Q. Now, at the top of this statement it says, "Steamer Camino, Voyage No. 12." Can you identify this as one of the duplicate statements, Mr. Kennedy, made out in your office, under your general supervision, so you can identify it as being that particular voyage?

By Mr. Giltner: Is that a duplicate or an original?

A. This is our office copy of a payroll, the original of which was undoubtedly sent to

(Testimony of C. D. Kennedy.)

Swayne & Hoyt at San Francisco, and this has been made out by Mr. Williams, clerk of the ship, and approved by Captain Ahlin, master of the ship.

(After some colloquy between the counsel and the court, the payroll was received in evidence and marked Defendant's Exhibit "A".)

Q. In this connection I would like to read portions; I don't care to read it all. The first part is repeated on each sheet, "Office of Swayne & Hoyt, San Francisco, California." That is stamped in the corner, "Received from Captain \_\_\_\_\_ for account of above steamer and her owners," and at the top it says, "Steamer Camino, Voyage No. 12."

Q. By Mr. Giltner: There is one question may I ask before he goes by, so as to give them a chance to cross-examine. Did Swayne & Hoyt have any cargo or freight on that boat, the steamer Camino, on the 31st day [9] of March, 1913?

A. There was cargo aboard that ship under their directions, that they had secured at San Francisco, and sent up here that the ship was handling. The ship was handling cargo that didn't belong to them, of course.

Mr. Giltner: They had the handling of it?

A. It was received under their direction, and delivered under their directions through me here.

Mr. Giltner: And they were having the handling of that cargo—isn't that a fact?

(Testimony of C. D. Kennedy.)

A. I don't know—

Mr. Giltner: Through you?

A. I was directing the handling of it, yes.

Mr. Giltner: Who by?

Mr. Snow: This is our examination, Mr. Giltner.

Court: Don't interrupt until they get through.

Mr. Giltner: All right, but you can answer that. Who by?

A. What was the question?

Mr. Giltner: Who were you directed to handle it by?

A. It was understood through the arrangement that I entered into with Swayne & Hoyt, taking the agency there.

Q. (Mr. Guthrie.) And you understood that Swayne & Hoyt were general agents for the owners, handling cargoes?

A. Yes, sir.

Q. And you were really sub-agents, through the agents of the owners, acting through the managing agents. Isn't that true?

A. I presume so, yes.

Q. Now, in connection with these matters, Mr. Kennedy, do you mean the jury to understand from your testimony that you, as local representatives of the managing owners, would have had the right to go down there and direct the captain how to handle his tackle?

A. No. [10]

(Testimony of C. D. Kennedy.)

Q. That is, you were not in active control of the ship's tackle, were you?

A. No, sir.

Q. And Swayne & Hoyt were not through you in that control?

A. No.

Q. So you had no control of handling the cargo as the ship handled it over the ship's rail?

A. No.

Q. That was done wholly, then, by the ship and her officers?

A. Yes, sir.

Q. And they were under the control of the master, were they not?

A. Yes, sir.

Q. And he represented the owners?

A. Yes, naturally.

Q. Now, who operated the winches, do you remember? Men from the ship or men from the union?

A. I don't know. It was customary for the men from the ship to operate them.

Q. And the Camino was usually operated by her own winches, is that true?

A. Yes, yes.

Q. Now, something was said about Mr. Dosch getting information from the captain as to how many men he needed?

A. I think I said mate.

Q. Why did Mr Dosch go to the captain if Swayne & Hoyt were in control, as suggested?

(Testimony of C. D. Kennedy.)

A. I think I said mate. He has orders from the mate. The men on the dock wouldn't naturally know what was required on the ship.

Q. And it would not have been in your province as local agent of Swayne & Hoyt to have directed the number of men to go on the ship?

A. No.

Q. And you were not, as agents or sub-agents, in direct charge of the men who were aboard the vessel? [11]

A. No.

Q. Now, Mr. Barsch came to you with respect to this injury, did he not?

A. Yes, sir.

Q. And you say you gave him a letter to Swayne & Hoyt?

A. Yes, sir.

Q. What were the circumstances at the time of his going to them? Do you recall?

A. He told me that he was going to San Francisco and that he would like to have me give him a letter or something, to Swayne & Hoyt at San Francisco, so he could call on them, and see what he could do towards obtaining some settlement or redress for his injuries.

Q. Did you understand that he was going on down to Los Angeles, to a longshoremen's convention at that time?

A. I think I understood that from other sources, not from him; understood there was to

(Testimony of C. D. Kennedy.)

be a convention at San Diego, and he was to be a delegate, I believe.

Q. He was not, then, making the trip specially to look into his injury?

A. I didn't understand so.

Q. Was anything said to you after *you* (he) came back about the extent of his injuries, or what compensation he desired?

A. No, I don't think so.

Q. Do you remember how much he considered his doctor bills amounted to?

A. I don't remember his telling me.

Q. I will see if I can show you a letter, and it may refresh your recollection. I show you this letter, dated April 21, 1913, and ask you to look at the second page of that letter, and see if it will refresh your recollection as to what was said to you by Mr. Barsch at that time.

Mr. Giltner: If the court please, no claim is made in the complaint here for doctor bills, but I may make the complaint after awhile. It was inadvertently left out, and we will show what they were.

Mr. Snow: Go ahead, Mr. Kennedy. [12]

A. This was a report I made in the matter to Swayne & Hoyt, before he went to California, not after.

Q. Not afterwards. Then at the time you made this report, which was April 21, 1913, according to its date, what had been the amount of

(Testimony of C. D. Kennedy.)

doctor bills incurred at that time by Mr. Barsch, according to his statements to you?

A. Is the amount mentioned in there? I didn't notice that. He told me whatever I reported in the matter.

Q. You will find it right in the middle. That is what I handed it to you for.

A. The doctor bills were five or six dollars.

Q. Then April 21, 1913, or a little more than three weeks after the accident, the report was made to you that his doctor bills at that date amounted to five or six dollars?

A. Yes, sir.

Mr. Snow: That is Barsch's report to you?

A. Yes, sir.

### REDIRECT EXAMINATION.

Q. Why did you make that report to Swayne & Hoyt for the doctor bills?

A. In mentioning—it is my duty, as agent, to report any accidents that might be occurring in port, and I reported the matter to Swayne & Hoyt, San Francisco.

Q. Why didn't you report it to the American Transportation Company that they speak of—the Western Steam Navigation Company?

A. I didn't know them.

Q. You never knew them in the transaction?

A. No.

Q. Did you ever at any time tell Gustav

(Testimony of C. D. Kennedy.)

Barsch that he was working for the Western Transportation Company?

A. No.

Q. Western Steam Navigation Company?

A. No. [13]

Q. Isn't it a fact that there was written and painted—I mean painted over the bow of this steamship Camino, "Swayne & Hoyt, Inc., San Francisco, Arrow Line, Portland, Managers"?

A. I don't think it had Portland on it.

Q. Didn't it have "Managers" on the bow of this boat?

A. I think so.

Q. Is it not a fact that Swayne & Hoyt were interested in the handling of that cargo?

A. Why, they were interested to the extent of their being agents.

Q. And to that extent you were representing them, were you not?

A. Yes, sir.

Q. You made a statement here, did you not, that Swayne & Hoyt were also interested in this steamship Camino?

A. Well, I don't know that I said they were interested except as agents. That is all I know them in the matter, as agents.

Q. Did you ever talk with Mr. Snow or Mr. McCamant about this transaction?

A. Yes.

Q. How often?

A. Once.

(Testimony of C. D. Kennedy.)

Q. What?

A. The two gentlemen together, once.

Q. Is it not a fact that on and prior to March 31, 1913, the defendants, Swayne & Hoyt, were the managing agents of the steamship Camino, with power to direct the movements and operations of the officers and crew of said ship, and said ship?

A. They were managing agents, and they directed the movements of the ship, I will say, yes, sir.

Q. And the operation of the officers and crew of such ship?

A. As far as I know, they employed the officers of the ship. The officers usually employ the crew.

Q. With power of directing the movements and operations of the ship, [14] and the officers and crew?

A. The movements of ships are generally directed by the officers of the ships.

Q. I mean Swayne & Hoyt were over them. Isn't that a fact?

A. Yes, I would think so.

Q. Did you ever have at any time, any admission from Swayne & Hoyt as to their liability in this case; any letters or anything that were written to you?

A. No, I don't think so. I had correspondence with them in connection with the reporting of the matter, but I had difficulty in getting replies to

(Testimony of C. D. Kennedy.)

my report which were solicited on account of Mr. Barsch calling on me.

Q. Did you send them any telegrams in regard to it?

A. I think I did towards the last, after Mr. Barsch returned from San Francisco.

Q. Did you get any in return from them, or anything of that kind?

A. I think there is one telegram passing each way between us, if I remember right.

Q. Have you got that telegram?

A. No.

Q. Who has it?

A. Well, it may be in the files that the attorneys have.

Mr. Giltner (to Mr. Snow): Have you got that?

Q. What did you do with the telegram?

A. If it is not there, it must be in my office in the file there.

Q. Did you turn the files over to Snow & McCamant?

A. One file turned over to them, yes, sir.

Mr. Giltner (to Mr. Snow): Have you got that telegram?

Mr. Snow: No, no telegram from them at all.

Mr. Guthrie: We have copies of some telegrams he sent down.

Mr. Giltner: May I see the copies he sent down?

Mr. Snow: Give us notice to produce. [15]

(Testimony of C. D. Kennedy.)

Mr. Giltner: I give you notice now.

Mr. Snow: Go on and make your proof, give us notice.

Mr. Giltner: May I look at those?

Mr. Snow: No, you can't look at this file at all.

### RE-CROSS EXAMINATION.

Questions by Mr. Guthrie:

Something was said now, Mr. Kennedy, by Mr. Giltner on his redirect examination, with respect to what Swayne & Hoyt thought of this man's injuries?

A. Yes.

Q. I will show you here a letter of May 14, 1914, signed by Moran—evidently a mistake as to the year—enclosing another letter sent you, which had something to say respecting the liability in this accident. I want you to look at this, and see if this is what Mr. Giltner is examining you about?

A. Yes, this escaped my memory. This matter is so. I couldn't remember this letter.

Q. And refreshing your recollection, now, Mr. Kennedy, was this admission which Mr. Giltner referred to, one that Swayne & Hoyt were liable, or that the steamship was liable?

Mr. Giltner: I object to that. I never asked him in regard to this admission. I asked him if any letters were written wherein they admitted that. I never asked for this letter. I asked to look at any letters they had.

(Testimony of C. D. Kennedy.)

Mr. Guthrie: He says now he does remember, and this is the matter.

Court: It wouldn't be competent unless it is admission of liability. They deny liability.

Mr. Guthrie: This is not our witness. This is merely to go into this full matter. Your Honor has ruled it is not admissible.

Q. Now, from some of the questions just asked you a few minutes ago, Mr. Kennedy, respecting the appointment of officers and master and crew, you don't want this jury to understand you know whether or not Swayne & [16] Hoyt appointed these men?

A. No, sir.

Q. You don't know anything about that, do you?

A. No, sir.

Mr. Giltner: What was the answer you made?

A. I don't know for certain that Swayne & Hoyt employed the master of the Camino or any other of their ships.

Q. And you don't know anything about the appointment of a master?

A. No, sir.

Q. Don't know who employed them or for what purpose?

A. No, sir.

Q. Now, along that same line Mr. Giltner's complaint or Mr. Barsch's complaint in this matter, has three general specifications of negligence. I want to know whether or not you or any one

(Testimony of C. D. Kennedy.)

here representing Swayne & Hoyt could have remedied these conditions. Could you have gone down there, and given instructions regarding a system of signals?

A. No, sir.

Mr. Giltner: I object to that as immaterial, incompetent and irrelevant.

Court: Go ahead.

Q. Could you have interfered, or could you have required a different set of signals to have been inaugurated?

Mr. Giltner: I object to that as incompetent, irrelevant, and immaterial, and not proper cross-examination.

Court: You are trying to show by this man your plaintiff was employed by Swayne & Hoyt.

Q. There is also an allegation of negligence in neglecting and failing to furnish a hatch tender or signal man. Could you or any man here representing Swayne & Hoyt, determine whether they should put a signal man on there, or must that come from other sources?

A. I couldn't.

Q. It was no part of your duty to determine whether to put a hatch [17] tender or signal man there?

A. No, sir.

Q. That is also wholly up to the officers of the ship?

A. Yes, sir.

Q. There is also a third specification saying

(Testimony of C. D. Kennedy.)

some one gave a signal to go ahead before he was notified by the men handling the load on the truck to do so. Do you know of your own knowledge whether there was a foreman of the dock down there at the time Barsch was hurt—I doubt whether you do. I just wondered whether you knew of your own knowledge there was a foreman at that time?

A. Foreman in charge of the men?

Q. At the time Barsch was hurt, the very time, half past seven or eight o'clock.

A. I can't say.

#### REDIRECT EXAMINATION.

Q. Now, Mr. Dosch was under you, was he not?

A. Yes, sir.

Q. Representing you when you were representing Swayne & Hoyt, in looking after the men for unloading that ship?

A. Yes, sir.

Q. Isn't that a fact?

A. Yes, sir.

The payroll referred to was offered and received in evidence as the payroll, containing the following at the head of the payroll:

“Office of Swayne & Hoyt, San Francisco, California.

Received from Captain ——— for account of above steamer and her owners.” [18]

Then followed signatures of men engaged in

(Testimony of C. D. Kennedy.)

the unloading and the name of the plaintiff Barsch was signed to the payroll, each of the names signed on the payroll indicating that each had received a given amount for work while unloading the vessel. On the payroll were stamped the words "Steamer Camino, Voyage No. 12."

E. A. Schneider, a witness in behalf of the plaintiff, having been called and sworn, testified substantially as follows:

Q. Mr. Schneider, what is your business? [19]

A. Longshoreman.

Q. Do you belong to the Longshoremen's Union?

A. Yes, sir.

Q. What position did you occupy in the Longshoremen's Union on and prior to the 31st day of March, 1913?

A. Business agent and secretary.

Q. Business agent and secretary?

A. Yes, sir.

Q. What were your duties in relation to that, in regard to making contracts for the men in the Union, to work in unloading and loading the ships that would come into port?

A. My duty was to fill the orders.

Q. What is that?

A. My duty was to fill the orders for men, you know, on telephone calls, or furnish gangs, you know, the men on these ships.

(Testimony of E. A. Schneider.)

Q. You had the power to make contracts for the men?

A. Yes, sir; the ships.

Q. Now, then, I wish you would state if you know one Gustav Barsch?

A. Yes, sir.

Q. Are you acquainted with Swayne & Hoyt, the defendants in this case?

A. Well, I know the company.

Q. State if you are acquainted with the steamship Camino?

A. Yes, sir.

Q. State if you had anything to do with the hiring of the men for the unloading of the steamship Camino?

A. Yes, sir. I had.

Q. On the 31st day of March, 1913, and with whom, and tell what took place.

A. Well, Mr. Dosch phoned for the men—

Q. What is that?

A. Mr. Dosch.

Q. What was the conversation that took place between you? [20]

A. He wanted so many men for the dock, and so many men for the ship. You see the ship carries a crew of eight, you know, and they always want a few extra longshoremen, you know, to work in the hold with the sailors, to make up two gangs.

Q. Did Mr. Dosch say for whom these men were, or anything? What was the conversation?

(Testimony of E. A. Schneider.)

A. The conversation was that he wanted so many men down there on the Swayne & Hoyt dock, the American-Hawaiian dock, or Swayne & Hoyt boat.

Q. Who for? What for?

A. The Swayne & Hoyt people.

Q. And for what purpose?

A. For discharging the vessel.

Q. For the Swayne & Hoyt people?

A. Yes, sir.

Q. Now, I wish you would state for the jury here, how the ship was rigged for unloading this cargo at that time.

A. Well, the ship was rigged just the same as all coasting vessels, you know.

Q. Well, these men don't know. I wish you would describe the cables.

A. Rigged, you know, with a double set of booms, you see, and fall, double fall, you know, double winches.

Court: You mean by "fall," rope or cable?

A. Yes, cable that leads up from the drum of the winch, through the lead block, up through the falls, you know, and the two falls comes together. You see there is the off-shore fall and the inshore fall, and the two falls come together, connected together with hook to hook on the cargo. That is to lift it from its position, wherever the load is made up in the hold, or wherever the load is made out in the dock so they can carry either way, carry offshore or carry inshore, to be taken

(Testimony of E. A. Schneider.)

apart, and the inshore as a general rule is what the sea-faring man calls the yard arm. The yard arm falls at a given signal; the yard arm fall and the offshore fall. [21]

Q. I wish you would state if they had any donkey engine there, or steam winch?

A. Yes, sir.

Q. How were they operated?

A. The winches were operated by one man with a lever in each hand, double winches.

Q. What kind of power did they use?

A. Steam power delivered from the engine room.

Q. Describe the sling that was used for hitching on to each end of the iron beam.

A. Well, they used the two chain slings; you see this beam, perhaps, is 18 or 20 feet long, something. They pick it up and they would grasp a hook on one end and hook the other, what they call a spread sling, and they hook on both ends of it and pick it up and deliver it on the dock.

Q. How was that sling attached to the cable or fall?

A. That was hooked on the cargo.

Q. I know, but how was it attached? How was it attached, this sling and the cargo attached to the fall?

A. How was it attached to the fall?

Q. Yes.

A. You mean the hook?

Q. Yes.

(Testimony of E. A. Schneider.)

A. That was hooked by chains and shackles, what we call shackles.

Q. And the rigging was attached to the end of a fall?

A. Yes, sir.

Q. And the sling was attached to the end of the rigging? Then they would raise it from the ship to the side?

A. Yes, sir.

Q. And the boom would carry it over the side of the ship to the dock?

A. The yard arm.

Q. And that would drop it down?

A. The yard arm bolt. [22]

Q. And that was the method they used on the steamship Camino at this time?

A. Yes, sir.

Q. Do you know whether there was anything painted on the bow of this boat, the steamship Camino?

A. Yes, sir, printings.

Q. Just tell the jury what was there?

A. They always—there is an oblong figure with their arrow through it, "Arrow Line, Swayne & Hoyt Company, Managers."

Q. I will ask you to look at this and state whether—

A. Or Swayne & Hoyt Company—

Q. (Continuing.) Whether it represents it.

A. Yes, sir, that represents it. That is on the bow.

(Testimony of E. A. Schneider.)

Mr. Giltner: I offer this in evidence, if the court please.

Mr. Snow: I don't care anything about it.

Marked "Plaintiff's Exhibit 2."

### CROSS-EXAMINATION.

Questions by Mr. Guthrie:

Mr. Schneider, you said that a certain method obtained down there in unloading that boat?

A. What?

Q. A few moments ago, in response to Mr. Giltner's question, you said that they had a certain method down there of unloading that boat.

A. Yes, sir, we had.

Q. You were down at the dock at the time Mr. Barsch was hurt?

A. No, sir, I was not.

Q. So you don't know of your own knowledge what was doing at that time?

A. I do.

Q. How do you know?

A. I have worked on them boats.

Q. Were you down there at the time?

A. No.

Q. Then you don't know what was done there at the time. How do you [23] know if you weren't there?

A. From general experience.

Court: At the exact time?

Q. We don't care about general experience—about the exact time.

(Testimony of E. A. Schneider.)

A. I didn't work on this vessel.

Q. Did you work that night?

A. No, sir, I was working there that night.

Q. On the Camino?

A. No, sir.

Q. Then you don't know how Mr. Barsch was working, or what system obtained?

A. Well, I don't say that I do. I didn't work down there on the boat.

Q. That is what I want to know.

#### REDIRECT EXAMINATION

Q. Did you ever see the steamship Camino?

A. Yes, sir.

Q. Did you ever see them taking freight off her? And taking freight on, unloading and loading it?

A. Yes, sir, I did.

Q. Did you see the steamship Camino any time she was in port on the 31st day of March?

A. Yes, sir.

Q. Did you see them at any time taking freight off the vessel?

A. Yes, sir.

Q. Were they taking freight off the vessel, as you describe it?

A. They were taking freight off the vessel, delivered down on the dock.

Q. Could it have been done in any other way?

A. Albers No. 3 Dock, there is where they delivered the freight.

(Testimony of E. A. Schneider.)

Q. Could it have been done in any other way, the structural iron beams?

A. The beams was delivered right by the ship.

Q. I know, but could they have used any other machinery?

A. They could, yes. [24]

Q. And was the winches that they had on the ship used for the purpose? Isn't it a fact that they were used for the purpose of taking—

A. Yes, sir.

Q. These heavy beams and heavy loads off the ship in that manner?

Mr. Guthrie: That is leading.

A. Yes, sir.

Mr. Giltner: I will follow it up and show it.

#### RE-CROSS EXAMINATION.

Q. You are a very good friend of Mr. Barsch, too, aren't you?

A. Just in a brotherly way, that is all.

Q. You take a good deal of interest in this case?

A. No, sir.

Q. Testify here frequently?

A. No, sir.

Q. Never testified here before?

A. Oh, I have a few times.

Q. Quite frequently, don't you?

#### REDIRECT EXAMINATION.

Q. But you testify only when you see the ac-

(Testimony of E. A. Schneider.)

cident, or you are a party to the contract of employment; isn't that a fact?

A. Yes, sir.

Q. And what you have stated is the truth in this case?

A. Yes, sir.

RE-CROSS EXAMINATION.

Q. Ever talk with Mr. Giltner about this case before?

A. No, sir, didn't know anything about it until I was subpoenaed on the case. Mr. Barsch has never spoken to me about it.

Q. You have talked to Mr. Barsch about it them?

A. No, sir. Mr. Barsch has never spoke to me about the case.

Q. Ever talk to Mr. Giltner's associates, Mr. Sewall or Mr. Brazell?

A. No, sir.

Q. Never talked since that day until now?  
[25]

A. No, sir.

Witness excused.

E. A. Schneider, recalled.

DIRECT EXAMINATION.

Questions by Mr. Snow:

Mr. Schneider, is this your signature to the payroll?

A. Yes, that is my signature. I signed "H. O. Wolff, by E. A. S."

(Testimony of E. A. Schneider.)

Mr. Giltner: Is that E. A. S. there?

A. Yes.

Mr. Snow: That is already in evidence.

Mr. Giltner: I should like to cross-examine Mr. Schneider on that.

Questions by Mr. Giltner:

Did you read this over?

A. Yes, sir. No, I didn't.

Q. When you signed his name?

A. Just what they showed me, now.

Q. You just signed his name without reading it over, this paper?

A. I just signed his name without reading it over.

Q. Could you tell now what this writing is on the top without reading it?

A. I could if I looked at it.

Q. Without looking at it?

A. Swayne & Hoyt, Steamship Company.

Q. Yes. Could you tell what receipt you were signing?

A. Yes, sir, I signed Mr. Wolff's payroll.

Q. But who did you sign the receipt for? For Mr. Kennedy or for—

A. Mr. Kennedy.

Q. And that is what you believed when you were signing this?

A. Yes, for the Swayne & Hoyt people.

Q. Did the captain of the vessel or anybody else pay you any money?

A. No, sir.

(Testimony of E. A. Schneider.)

Q. No, sir. [26]

A. No, sir, I would like to state to the jury, if it is permissible at this time to make a statement to the jury, that Capt. Ahlin was mentioned, and Capt. Ahlin asked me to go down to the vessel; that is, previous to this time, so we know who we were working for, and Capt. Ahlin told me that Swayne & Hoyt people were dissatisfied with the conditions in the Port of Portland there.

Mr. Snow: I think this is wholly objectionable.

Court: No, it is not competent.

Mr. Snow: I move to strike it out.

Mr. Giltner: No objection to that.

### CROSS-EXAMINATION.

Questions by Mr. Guthrie:

You have signed this thing a great many different places, for different men?

A. Yes, sir; the boys tell me they are liable to be busy, going on the dock the next day, and they tell me "Ed, go and get my money."

Q. This "E. A. S." is everywhere your name?

A. Yes, sir.

Q. So you are very familiar with the payroll?

A. Yes, sir; I put my signature for every man's name I sign, so the office force or cashier knows.

Q. And you have no difficulty reading plain English language either?

A. No, sir.

(Testimony of E. A. Schneider.)

Q. And when these men were sent down to the steamer by you, didn't you send a list of these men down for the time keeper to make the roll by?

A. Yes, I sent a list of the men down there, yes, sir.

Q. And at the top of each list, you list them under the steamer, don't you? The steamer, not the dock, don't you? Isn't that the custom?

A. That would have no bearing—

Q. I asked if it isn't true. I don't care whether you think—

A. Naturally. The custom of the port. You see, a man working in the [27] office, and he gets a call for men; he sends them to the steamer direct, and directs the man what dock the steamer is located.

Q. Yes, that is all I want to know. What I wanted to know was what the fact was.

A. The steamer calls for the men.

#### REDIRECT EXAMINATION.

Q. Did you communicate to Mr. Wolff, or any one, as to what receipts you signed at this particular time?

A. No, sir, I didn't communicate. They asked me to draw their pay for them, and I drew their pay for them.

Q. And you gave them pay?

A. Yes, sir.

Q. Where was it you got the money?

(Testimony of E. A. Schneider.)

A. I got that on the second floor in the American-Hawaiian, Mr. Kennedy's office, before they transferred it down on Stark Street, on Third and Stark Street.

Q. Where did you get it from?

A. I got it from their cashier.

Q. Who was it?

A. I don't know the young man's name.

Q. Was he in Mr. Kennedy's office?

A. Yes, sir.

Q. What I want to know is, it was in Mr. Kennedy's office where you got the money?

A. Well, American-Hawaiian office, but under Swayne & Hoyt people, the Arrow Line.

Mr. Guthrie: You sign a great many—you have signed a great many of these before that particular time, haven't you?

A. I signed several of them, yes.

Witness excused. [28]

Henry Wolff, having been sworn as a witness for the plaintiff, testified substantially as follows:

DIRECT EXAMINATION BY MR. GILTNER.

Q. What is your name?

A. Henry Wolff.

Q. What is your business?

A. Longshoring.

Q. Do you belong to the same Union that Mr. Barsch belongs to?

A. Yes.

(Testimony of Henry Wolff.)

Q. You are acquainted with Mr. Barsch, are you?

A. Yes.

Q. State whether you were ever employed by Swayne & Hoyt, the defendant in this case.

A. Yes, sir.

Q. To assist in either loading or unloading any of their vessels prior to the 31st day of March, 1913?

A. Yes, a year ago, 1913, 31st of March.

Q. Well, were you ever employed to do any work for them before this accident happened?

A. Yes. Yes, sir.

Q. How often would you say?

A. Well, sometimes they run about every two weeks, they come in. Sometimes every four weeks, them boats. Some boats that come in every ten days. That is the way they come in.

Q. Who paid you?

A. The Swayne & Hoyt Company.

Q. Through whom were you paid?

A. Through Mr. Kennedy, through their agent.

Q. Now I wish you would state whether you were working with Gustav Barsch on or about the 31st day of March, 1913, about 7:30 P. M., the day on which he was hurt. [29]

A. Yes, we was working together; we was partners together, me and Gus.

Q. What were you doing?

A. In the morning Mr. Dosch, he phoned up

(Testimony of Henry Wolff.)

to our secretary of the Association to send so many men; I don't know how many; sometimes 28, sometimes 30, up to 40 men, the highest; and we come down to Alber's Dock No. 3, the dock where the steamer came in, was docked. We go down there, and Mr. Dosch, he placed the men. He send some on the ship and some on the dock, and some he tells to sort the freight, and he put two and two on it, half to land the loads on the dock, and pull them in, pull them in inside the dock, and these two or three men to sort that freight; they have to look out for all the marks.

Q. What?

A. They have to look out for all the marks, what is on the freight, the marks.

Q. Was any marks on this freight?

A. Yes, sir.

Q. Well, state.

A. Swayne & Hoyt & Company, and all kinds of marks. There is all kinds of freight carried there.

Q. Well, was the name Swayne & Hoyt on any of this freight?

A. There was some freight, yes, sir.

Q. Where was it taken from?

A. From the Camino.

Q. Well, now state what you had to do with that?

A. Well, I, of course—we had to land the loads on the dock and pull it in, inside the dock, and there was some men that took the freight off on

(Testimony of Henry Wolff.)

the dock from the truck and sorted it, and put it on the other docks, and some they took it away—see? We worked that day through the day, and at evening, five o'clock we went for supper; after we got back we worked a little, and the freight was all gone to the iron, to them building things; they were fourteen or sixteen inches wide, and sixteen or eighteen feet long. [30]

Q. How much would they weigh?

A. Seven or eight hundred pounds.

Q. Before you go further, I will ask you this question: How high was the top of the boat—the main deck of the boat above the dock, the floor of the dock?

A. Well, see in the morning, when we started in maybe she was a couple of feet above the dock, and in the evening about five o'clock, after five o'clock, she was seven or eight feet above the dock; she raised up. You know when three gangs take freight out the ship is going up; she is bound to go up; she raised out of the water.

Q. State how near they would drop the freight over the side of the vessel. How near to the vessel was the freight when they dropped it over?

A. With the small freight, what is slung, the boxes, and that stuff is about five feet from the vessel, just five feet and come right out to the edge, the front of the dock, alongside the steamer on the dock you see. The fall iron drops, about eight feet long; we land the load on and they unhook the hook and we pull the load in, inside the

(Testimony of Henry Wolff.)

dock, and we do that part of the day, in the evening, after half-past seven; and we start in on the iron, and you know there is a mast and there is two bolts on the mast; one is straight out that way; one that way, one that way (indicating); there is a fall on each boom, and it is connected on the winch; there is a big drum and it is operated with a winch—with steam, with them two falls; on each boom you see there is a fall and there is a shackle; them two wires or shackles come together in a ring, and in that ring there be two chains; there is the hook on the end, and then there was a chain; when we took the boxes, we didn't need these chains; all rope slings; all slung in rope sling, the boxes. Well, we was starting in on the iron; they took two big long chains; they hooked them two chains in that hook; hooked one hook on each end of the beam, and hooked it on like that (illustrating). They hoisted them up; this boom what is sent out to the dock that way, and they pull that out; pull [31] that out, over on the edge of the dock—on the ship; and the beams—the boom wasn't far enough out; we couldn't get any freight out on account the fall is striking the roof. They land one end down; we get ahold of it, me and him and pull it off on the ship, and she went right down against the ship—this end—this back end; the front end, we took that hook off, and we had to pull the load in a little to get that hook off on the other one. Can you understand that now?

(Testimony of Henry Wolff.)

Juror: Yes.

A. Why, we took out—I think we worked for half an hour on that beam; everything went all right; whenever we had it landed, we always hollered to the winchman “Go ahead,” when we had it unhooked; and that time, you know, half-past seven, it got dark; and as soon as we had that front one unhooked, I and my partner, he was stooped down and got hold of the handle—there is a handle on the truck, you know—he stooped down and got hold of the handle, and I was on the other side. We tried to pull the load a little in and unhook the hook, the front end, and as soon as we did the winch went ahead and raised the beam up and crushed that man here on the kneew, and cut a piece here out of the finger and knocked him down. That is the way she went.

Q. Where was the winch located?

A. Well, the winchman was in the center of the ship, on the center hatch.

Q. About how far away was he from you?

A. Well, about 28 feet.

Q. Was there anything to prevent you from seeing the winchman or the winchman seeing you?

A. He couldn't see us; we had to holler every time we unhooked the front hook, and we pulled the load a little in, and as soon as we unhooked the other hook, she was against the ship; we unhooked that and told the winchman to go ahead.

Q. State now if you were notified by any one

(Testimony of Henry Wolff.)

before the winchman went ahead with this load to get out of the way, or anything of that kind.

[32]

A. Well, we never notified him; we never notified; we always notify him when we had to hook.

Q. Did you get any notice from any one to get out of the way?

A. No.

Q. State by what power these winches were operated.

A. Steam.

Q. Steam power?

A. Steam power, yes. I think when I remember, they burn oil on that boat.

Q. What?

A. They burn oil on that boat. With steam. Through the day, you know, when the steamer it wasn't way up high, you see, where the winchman could see down and see what we were doing, and we don't need to holler at him at all; in the evening it got dark and the steamer raised up, and he couldn't see us, and every time we had unhooked, we hollered "Go ahead" and he went ahead. We never said a word to him, and we never had it unhooked yet; we was just about to pull a little away from the ship to get that hook loose.

Q. Did they have any signal man there?

A. No, they don't have nobody there.

Q. Never had any there?

(Testimony of Henry Wolff.)

A. No.

Q. Did they have any system at all of signaling you?

A. There was nobody over that hatch at all. The mate was walking once in awhile from one hatch to another.

Q. Who was the mate?

A. The officer from the ship.

Q. What are the duties of the signal man, if you know?

A. He is the hatch tender.

Q. What are his duties?

A. He is giving the winchman orders to go ahead and come back. He is put there, if they put him in there so he looks out so nobody gets hurt. [33]

Q. Is he in position to see the winchman?

A. He stays on the ship and he sees the winchman, and he gives the winchman the signal to go ahead and go back, and he has to look at the hold, and see if he is hooked on when the load comes up. And if the load isn't right, he has to tell the winchman to stop. He have to tell the winchman to stop that, the load ain't swung right, and he put the load on the dock. He have to give the winchman orders to go back.

Q. And he has to notify the men to get out of the way too?

A. Well, when they see—when he sees anything isn't safe, he tells the boys to look out, get out.

(Testimony of Henry Wolff.)

Q. What is the fact as to whether there is danger connected with unloading? Was any danger connected with the unloading of that vessel?

Mr. Guthrie: That is very leading.

Court: Let him describe the manner of the work, and the jury will understand.

Mr. Guthrie: I don't like words put in his mouth.

Q. I wish you would state how this load—how the loads were carried, or where they were carried from on the ship and how they were let over on the dock?

A. Lowered down.

Court: Now, you mean the iron?

Q. Yes, the iron.

A. The winchman, when it is taken out on the yard arm to the dock, and he is lowering it down, and we had to holler "lower" and "come back."

Q. What would you have to do when he would lower it down?

A. I had to get hold and put it so I could get it on the truck.

Q. Would Mr. Barsch have to do that too?

A. Yes, sir.

Q. Would the load be swinging in the air while he was taking hold of this load? Would the heavy beam, would it be up on the dock, or above the dock?

A. That was down then on the dock. [34]

Q. I mean the load, when swinging from the

(Testimony of Henry Wolff.)

boom, does the winchman leave it down on the dock, or do you have to get hold?

A. We have to get hold. We have to tell him they should have a signal man there to tell them to hold it, let the man get ahold of it. We have to get ahold of it, and steady it so we get it on the truck.

Q. And have to take right hold?

A. We have to get hold of the iron like that, the beam, one on each side and pull it in, and get it so we get it on the truck.

Q. That is before the load is on the truck?

A. Yes.

Q. Before it touches anything?

A. Before it touches anything, and we have to sing "come back." If they have a signal man on the ship, the signal man do that. He gives the winchman orders to lower a little, and when lowered a little, so we can land on the truck, he says "go back."

Q. That gives you an opportunity to get out of the way, does it?

A. Yes.

### CROSS-EXAMINATION.

Questions by Mr. Snow:

Mr. Wolff, how long have you been a long-shoreman here?

A. Me?

Q. Yes.

A. 17 or 18 years.

(Testimony of Henry Wolff.)

Q. Working down on the dock all this while as a longshoreman, have you?

A. Working longshoreman, working on the dock and in the ships, and all; wherever I goes, I do work. When the foreman tell me to go in the hold; and he tells me to stay on the dock, we work on the dock.

Q. Now, you remember, do you, of helping unload the Camino in March of last year, 1913? You remember that, of course?

A. The Camino?

Q. Yes. [35]

A. Well, I was there, of course.

Q. And you remember the time when you and Mr. Barsch were together there, unloading, having your station on the dock, and when Mr. Barsch was hurt?

A. Yes, sir.

Q. Now, who employed you, or directed you to go up to the dock and do that work?

A. Who employed us?

Q. Yes. Who directed you to go up to that dock?

A. Schneider.

Q. What did Schneider say to you?

A. He told us to go down on the dock, on the steamship Camino. He hired us; he sent us down; so many men.

Q. The steamer Camino wanted so many men, and Schneider selected those men, and they

(Testimony of Henry Wolff.)

all went down to the Camino to unload her. Is that right?

Mr. Giltner: I object to that. He didn't say the steamer Camino wanted so many men.

Mr. Snow: One at a time. You had your innings, and we will take ours.

Q. Now, Mr. Wolff, Mr. Schneider selected the men to go down and unload the Camino?

A. Schneider?

Q. Yes.

A. Schneider comes down on this, he takes the work around there during the day and evening. When a boat works night and day, he comes around and sees how it looks, how the work goes on.

Q. But Schneider selected you men to go down and unload the Camino, did he?

A. Schneider got the order from the foreman on the dock; they phone up they want so many men.

Q. Wait a moment. Let's get our—

Mr. Giltner: Let him answer. [36]

A. Yes.

Mr. Snow: One at a time, and we will get through with this thing.

Q. Now, Schneider told you and Barsch and the other men to go down on this Alber's Dock?

A. Yes, sir.

Q. And help unload the Camino. How many men went down?

(Testimony of Henry Wolff.)

A. Well, I can't tell how many was that time. Sometimes we take more than another.

Q. No, not sometimes, but how many men this time, I mean. Do you know how many men were at work from the Longshoremen's Union down there unloading that vessel?

A. I couldn't say exactly how many there were. There were three gangs, I know.

Q. He told you to go down to the Camino dock, down to the dock where the Camino was tied up and unload the vessel? Is that right?

A. Who?

Q. Schneider.

A. He sent us down, he put us down on the list; yes, we went down.

Q. Now, you and Barsch and the other longshoremen, whatever their number may be, went down to unload the vessel. Is that right?

A. Yes, sir.

Q. Now, how long did it take you to unload the vessel? Do you know that?

A. We worked that day, and we worked that night, I think until 11 o'clock, and the next day I couldn't say how long we worked.

Q. How long had you been working before Mr. Barsch was hurt?

A. How long?

Q. Yes.

A. We worked all day that day, and we worked that night, and he got hurt half-past seven.

(Testimony of Henry Wolff.)

Q. And then you came back the next day and finished the unloading?

A. But Mr. Barsch never came back. He couldn't work.

Q. I am speaking about you. You came back the next day with the other [37] longshoremen and finished the unloading?

A. Well, I couldn't tell now whether we got through that night or not. That is a year ago. I don't remember if we finished that night. I know we worked until eleven o'clock. We may come back, I think. Yes, we worked the next day a little. I don't know how long she lasted the next day.

Q. When you began to unload the vessel, when you first went down, you say the vessel was about two feet above the level of the dock?

A. Above the dock.

Q. Above the level of the floor of the dock?

A. Above the dock. I call that above the dock, not level.

Q. All right, above the dock. The vessel was up two feet above the dock, and when night came along, by the time you got down to these irons to unload, she was some seven or eight feet above the floor of the dock?

A. Yes.

Q. Is that right?

A. Yes, sir.

Q. Just tell now what you and Barsch did

(Testimony of Henry Wolff.)

during that day that you were working, and just how you did your work.

A. We landed the loads on the dock, and unhooked the sling, and put the loads in inside the door, and there was some men that took the freight off and sorted the freight out, and put it on the piles, and piled it up, different piles.

Q. What did you and Barsch do about telling the winchman when to swing his stuff in? Just tell us that again.

A. What?

Q. What did you and Barsch do to the winchman—what did you say to the winchman?

A. We told him come back every time the load swung in, and when we got hold on it, and had it so we could swing it on the truck, we told him to go back.

Q. You told him to come back? [38]

A. We called him, yes.

Q. Now, just tell how Mr. Barsch was hurt at that time?

A. How much?

Q. How he was hurt.

A. Well, didn't I tell you before?

Q. Well, I would like to have you tell me again, if you will. You told Mr. Giltner.

A. We was taking out the iron in the evening. We landed a beam on the dock, and unhooked the front hook, and this other end was against the ship; that was against the side. That was tight against that. We couldn't unhook that.

(Testimony of Henry Wolff.)

We had to pull the load a little way, about two or three feet in, so we could unhook that there; hook on the other end; we had that front hook unhooked, and when we started to pull in, the winchman went ahead full steam, and raised the beam clear up, as high as the ship, and it knocked him down and took a chunk out of his finger.

Q. Now, then, after the injury to Mr. Barsch, you say he didn't go back the next day? Barsch didn't go back the next day?

A. The man couldn't walk.

Q. What?

A. The man couldn't walk, hardly.

Q. He didn't go back, did he?

A. No, no, he didn't go back.

Q. Now, you remember signing the payroll down there, don't you?

A. What?

Q. You remember signing that payroll, don't you?

A. I don't think I ever signed my name. I think Schneider drew my money. You see they always pay up after a day, you see, and I never lie around. If I get a job the next morning, I go to work, and I have the business agent draw the money.

Q. Then Schneider signed the payroll for you, did he?

A. Well, if I not sign, the man who draws my money have to sign.

(Testimony of Henry Wolff.)

Q. Well, you sent Schneider to draw your money? [39]

A. Well, a year ago; I couldn't remember all this.

Q. Well, here is the signature here to the payroll, that has been already received in evidence. "H. O. Wolff,"—is that your signature?

Mr. Giltner: Let me see it.

A. No, I didn't sign that. I guess Schneider drew that.

Q. Then you sent Schneider down to get your money, did you?

A. Yes, sir.

Q. You authorized Schneider to draw your money, did you, for that purpose?

A. Well, we don't need to lay off; when we get a job the next morning, we tell our business agent to go and draw the money, and he goes and draws the money.

Q. And you told Schneider in this instance to draw your money for this work?

A. Yes.

Q. Now, do you remember what Schneider said to you when he told you to go up and work on the Camino, when you first started up on the trip, the trip that Barsch was hurt?

A. Yes.

Q. What did he say to you?

A. He takes the name down, and he gets the list, and he says "Go ahead, and go down; go down on this ship."

(Testimony of Henry Wolff.)

Q. Did he mention the ship?

A. He mentioned the dock.

Q. Did he name the ship you were to unload?

A. Well, he mentioned the dock and the ship together.

Q. The ship Camino?

A. The dock and the ship.

Q. The ship Camino on the Alber's Company dock, is that right?

A. Alber's. [40]

E. Ferguson, having been sworn as a witness in behalf of the plaintiff, testified substantially as follows:

**DIRECT EXAMINATION BY MR. GILTNER.**

Q. Mr. Ferguson, what is your name?

A. E. Ferguson.

Q. What is your business?

A. Longshoreman.

Q. State if you are acquainted with Gustav Barsch.

A. Yes, sir.

Q. I wish you would state now what you were doing on or about the 31st day of March, 1913, about 7:30?

A. I was working on the steamer Camino.

Q. Were you working on the steamer or on the dock?

A. On the dock—slings on the dock.

Q. I wish you would state what you were doing.

(Testimony of E. Ferguson.)

A. I was taking the loads from Mr. Barsch and Mr. Wolff during the time that Mr. Barsch got hurt. They were landing the load on the truck and I was taking the truck away.

Q. Who was the dock foreman over you?

A. Mr. Dosch.

Q. And who was superintendent over all of you?

A. Well, the mate was there and Mr. Kennedy. They all have something to say over us.

Q. I will ask you whether the mate ever gave you any directions? What was his name, if you remember?

A. Oh, yes. I believe his name is Ahlin. When we are outside he give orders several times, hurry up, and told the winchman to go ahead.

Q. I wish you would state now if you saw this accident.

A. Yes, sir.

Q. Now state to the jury how this accident happened as near as you [41] can, and before you do that, I wish you would state as to the height of the ship over the floor of the dock, and where the winchman stood to run the steam winch.

A. Well, the ship was about eight feet, I should judge, over the dock, over the level of the dock, higher up than the floor of the dock. The winchman stood at the after end of No. 2 hatch in the middle of the hatch. He was probably—the hatch was about 24 or 28 feet long. I don't know.

(Testimony of E. Ferguson.)

It might have been 30 feet long. I never measured it, but the fall comes up in the middle of the hatch, or the cable, and then he would be—probably he was 25 or 30 feet from where we were, and we were inside the dock. I was inside the dock. He couldn't see me.

Q. Well, could he see Mr. Barsch and Mr. ——

A. No, he couldn't see them; impossible.

Q. He couldn't see them?

A. No.

Q. Why couldn't he see them?

A. Well, they weren't out in the light. There was no light in the edge, and the first place, him being so far aft, and they were right inside the door. He couldn't see inside the door. He couldn't see over the dock. He couldn't see the rail when it landed.

Q. Now, I wish you would state and explain how this accident happened, what they were doing.

A. Well, the rail came out, you know; they hoisted it up with the two falls, until it gets over the hatch, then they slack away on one fall, and take up another, and that takes it into the dock. It swung around there for awhile; they caught it, and steadied it.

Q. Swings around in the air, does it?

A. Yes, it swings around naturally, you know, when it comes up; it swings around. It won't go up steadily, you know. One fall slacks away, and the other fall hauls up, you know, and it nat-

(Testimony of E. Ferguson.)

usually swings around a little. They caught the thing, and they pulled it in. When they got it over the truck, they hollered to come back. He come back, [42] and they released the front hook. It was slung by two chains, you know, and a hook in each end; one hook was around this end of the beam, and the other this end, hooked right over.

Q. They released?

A. They were a T flange in the rail, the hook couldn't slip off, so they released the front hook, and then Barsch stepped down to catch hold to pull the truck in—

Q. Pull the truck or the load in?

A. Pull the truck or load—the load was landed in the truck then. He reached down to pull the truck in, and the mate happened to walk along the deck at that time, and he got right in the middle of the hatch, and he hollered to the winchman to go ahead, and the winchman went ahead full speed, and pulled that end of the rail up. The other end came down, and I looked around, and Barsch was laying on the floor of the dock, and his hands was all bleeding. I was watching the boys; I didn't see just exactly how the rail struck him. He got up. He could hardly scarcely limp along, and a great piece cut out of his finger.

Q. State now whether they had any signal man there to signal between the winchman and the men working on the dock?

A. They had no signal man.

(Testimony of E. Ferguson.)

Q. Do you know whether there was any freight on that boat belonging to Swayne & Hoyt, with their names on it?

A. Oh, yes, there was some.

Q. What?

A. There was some freight for Swayne & Hoyt.

Q. Did any one give any notice to you that they were going—the winchman was going ahead with the load? Did you receive any notice from any one?

A. No.

Q. I wish you would state, if you can, any circumstances attendant to the unloading of that iron beam which would show that it was dangerous work. That is a little leading, but I think you can get at this. [43]

Mr. Snow: Well, he has stated the facts, this witness has, everybody knows.

A. It was dangerous because they had no signal man there.

Court: That wasn't what he asked. He asked you what incident there was attendant. What happened at the time.

Mr. Snow: Just tell what happened, that is all; what occurred.

Q. Well, what is the fact about that?

Court: As to how they did the work.

Mr. Snow: How was the work done? That is the point.

A. Well, I said before how it was done, about

(Testimony of E. Ferguson.)

taking the rail up, it was dangerous work, because we didn't have a signal man. They ought to have a signal man.

Q. State whether it is the custom, or what the custom is, where winchmen cannot see the engineer, whether it is the custom to have a signal man to signal between the men in this port?

A. Custom to have a signal man; any kind of ships where the winchman can't see, always have a signal man.

### CROSS-EXAMINATION.

Questions by Mr. Guthrie:

You signed this payroll here, didn't you?

Mr. Giltner: I object to that. I never asked any questions about that. It is not proper cross-examination. He can call him as his own witness, but it is not proper cross-examination.

Court: Let him testify.

Q. You testified you were employed in this particular transaction, didn't you?

A. Sir?

Q. You were working at this particular time, weren't you?

A. Yes, sir.

Q. And you signed this payroll?

A. I don't know whether I drew my pay for that time. Sometimes we are working the next day, and we have the business agent draw our money.

Q. In any event—take this one. [44]

(Testimony of E. Ferguson.)

Mr. Giltner: Is this the one in evidence?

Mr. Guthrie: It will be. This is in evidence. Is that your signature down at the bottom?

Mr. Giltner: Is that the one that has been introduced in evidence?

Mr. Guthrie: Yes sir, this is steamship, Voyage No. 12.

A. Yes, this is the one that was introduced. I guess Schneider did.

Q. You think Schneider did?

A. Yes, sir.

Q. You are familiar with this kind of payroll?

A. Not very familiar. I haven't drawn my money very often. The business agent does it.

Q. Then these signatures are not yours? This one you don't think you signed. Look at the second one there. Is that your signature?

A. I don't think so.

Q. Well, there is no initial behind that. Look at it.

A. That is not my name.

Q. Your name is not Ferguson?

A. My name is Ferguson, but you look at the initials.

Q. He has the "E" in there?

A. Yes, but got an "H" too, hasn't it?

Q. I think the other man has too. That is what I am trying to find out.

Gustav Barsch, having been sworn as a wit-

(Testimony of Gustav Barsch.)

ness in his own behalf, testified substantially as follows:

DIRECT EXAMINATION BY MR. GILTNER.

Q. Are you the plaintiff in this case? [45]

A. I am.

Q. State if you had any business relations with the defendant, Swayne & Hoyt. [46]

A. I have.

Q. On or about the 31st day of March, 1913?

A. I had.

Q. Just tell the jury the circumstances and facts about it.

A. We were called on in the morning by our business agent. He called for about, I think, it was something over 30 men to go down for Swayne & Hoyt people, and work on Alber's Dock No. 3, steamship Camino. When we went there, we were put to work on the dock, by Mr. Dosch, the general foreman. He places the men, men sorting freight and others were trucking, and others were landing the load, the same as I. I was landing the loads. I took general cargo out that day, up to about 7 o'clock that evening. We worked from seven to twelve. Twelve we go to diner, and start at one. From one we work till five. At five o'clock we went to supper, and come back at six. From six we work until a little after seven on general cargo. After that, we start at the structural iron. Now, when we hoist these beams, there is two directors attached to the mast.

(Testimony of Gustav Barsch.)

The end of the director, the top of the director, is attached by lift to the top of the mast, and the winches are in front of the mast, two winches. Hand winches handling.

Q. What are they operated by—what power?

A. By steam. They are called friction engines, as a rule. The cable runs from the drum of the winch thru a block to the heel of the director, and through the block above on top of the director, and come down and are connected by shackle, and the shackle is connected by swivel, and that swivel is attached to the hook, and to keep the falls from coming together, rolling up like a rope, there is a swivel above the hook, and when we take these iron beams out there are two chains. They come together in the hook, and top from that back link or ring, what you might call, leading out this way when the iron is slung. One leads this way, the other that way, and each attached to a hook. Them two hooks are attached to the steel, a steel beam, and the winch driver goes ahead with the offshore fall. The beam is mostly on the offshore [47] side. You see them beams are not directly over the hatch, because in dragging loads out of the ship, they are spread out. They are long beams, and will spread out. He goes and hoists out with both winches, both winches go ahead, and as soon as it is *a* high as the hatch combing, the inshore winch takes the weight, and falls it over towards the dock. In most cases the load will swing,

(Testimony of Gustav Barsch.)

especially beams. They can't spread well, be steady, and they are swinging around in a circle. Sometimes they strike the dock, and sometimes injure the dock.

Q. What happens when they strike the dock sometimes?

A. Well, they may split those boards in the dock, and they may strike some men that are working there; therefore you have to be out of sight. The beams are lowered low enough so the men who are landing them can get hold and steady them, and load them on these trucks. The trucks has four wheels about eight feet long, and got a handle attached to it on the end. The handle is towards the inside of the dock. The truck is run back out to the front of the dock; when that beam is landed, we unhook the front hook. I was on the inside of it, the inside of the dock. I unhooked the front hook, and let it slip down on the rail, and got hold the beam handle as is the custom, to pull, because it takes some pulling to get over a rough dock, and there when I had hold of it, this winch driver went ahead without any notice, didn't give us any notice at all. I didn't hear and didn't see anything until I was knocked down, struck me partly here on this knee, and took a piece out of this finger here, and took a long time to heal up. And it was about half-past seven that evening.

Q. I wish you would state now, who was working there on the dock with you?

(Testimony of Gustav Barsch.)

A. There was quite a few men working. My partner particularly; Mr. Wolff was my partner.

Q. Was Mr. Ferguson there?

A. Mr. Ferguson, yes. It was duty to take the loads away from us. [48]

★            ★            ★            ★            ★            ★

Q. Now, Mr. Barsch, I will ask you if you had—if you ever visited Swayne & Hoyt?

A. I did.

Q. Tell the jury the circumstances under which you visited them and where you went.

A. I went to Mr. Kennedy here first, and Mr. Kennedy gave me a letter [49] of introduction to Swayne & Hoyt in San Francisco. The offices were located on Sansome Street, and I met the—I went to the office, and gave the letter to the clerk, the head clerk there, the chief clerk.

Q. Who was the letter addressed to?

A. Addressed to Swayne & Hoyt, and I gave it to him, and he says “Wait a minute,” he says, “until Mr. Moran is in here. He is the general manager here and he attends to these cases.” I waited until Mr. Moran came and he says, he says to me, he says, “Are you Mr. Barsch”? I says, “Yes, I am the man that is working for Swayne & Hoyt people in Portland, unloading the steamship Camino.” “Yes,” he says, “I heard about that.”

Mr. Snow: Wait a minute. What is this conversation you are asking about, Mr. Giltner?

Mr. Giltner: He is stating.

(Testimony of Gustav Barsch.)

Mr. Snow: With whom?

Mr. Giltner: Mr. A. A. Moran, one of the officers of the Swayne & Hoyt Company.

A. Represented to me as the general manager.

Q. Well, go on and state what the conversation was.

A. I say, "I am the man that was working for Swayne & Hoyt in Portland, unloading the steamship Camino, and I got hurt." He said, "I heard about that." He says, "How bad were you hurt?" I said to him, made a statement to him, he says, "Well, I am very busy today. Come back in a few days, or day after tomorrow, and I will look into this case." I came back a few days later, I think it is about two days later or so. I come back to him about ten o'clock in the morning, and I waited there until twelve o'clock. Mr. Moran did not show up. At twelve o'clock I seen him. I says, "I am here. I want to get some information from you." "Well, yes," he says, "I haven't—I have been very busy, and I haven't looked into your matter yet, and I will be having it done right away." Finally he commenced talking. "I am very busy," he said again. "I am very busy today. Can you come back at ten o'clock tomorrow, and [50] I will be at liberty to attend to your case for you and will go to our lawyer and settle our case."

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Q. You came back the next day at ten o'clock, you say?

(Testimony of Gustav Barsch.)

A. I came back the next morning at ten o'clock.

Q. Waited how long?

A. Waited until three o'clock in the afternoon. I asked the clerk, "Has Mr. Moran been here?" I waited all the time there. "Has Mr. Moran been here?" "No, I haven't seen him." Well I got rather angry.

Q. You don't need to state what you said to the clerk, but you waited until three o'clock?

A. Yes.

Q. What did you do then?

A. I went out and said to the clerk, "I am going back to Portland tonight and take such action as I see fit." And I went out the office door and I wasn't gone more than twenty steps when out comes Mr. Moran and hails me and said, "Come back here." I went back to him, and he says "Now you are the man." "Yes," I say, "I am Mr. Barsch." "I am Mr. Moran," he says. "Yes, I know all about that," he says. "I will give you a letter, I will send you up to our lawyer who settles all our cases for us." And he sent me up to Mr. Campbell.

Q. Mr. Campbell the lawyer?

A. A lawyer, and which building it is in I don't know. It is Mr. Campbell the lawyer. I went up and stated the case. Mr. Campbell said to me—

Q. Did you get any settlement from Mr. Campbell?

(Testimony of Gustav Barsch.)

A. Mr. Campbell say—

Q. Don't state what he said.

A. No. [51]

Q. What did you do then?

A. I came back. Well, if I can't relate the whole matter.

By the Court: You came back to Portland?

A. I came back to Portland and came up to Mr. Kennedy's office.

Q. What did Mr. Kennedy do?

A. Mr. Kennedy says, "Here, come in my automobile and we will go up to the doctor. I got notice from San Francisco to take you to the doctor here in Portland. And we went to a doctor. [52]

Q. Did that doctor examine you?

A. The doctor examined me.

Q. What did you do afterwards?

Mr. Snow: What doctor was that?

A. A doctor here. I don't know.

Mr. Snow: Dr. Hamilton?

A. That may be his name. I don't know exactly his name.

Mr. Snow: Where was his office?

A. I don't know. His office was somewhere—

Mr. Snow: Well, never mind.

A. I don't know exactly where his office was.

Mr. Giltner: Well, you can cross-examine on that.

Q. Well, did you go and see Mr.—you don't

(Testimony of Gustav Barsch.)

need to state what was said—did you go and see Mr. Kennedy after that?

A. I did.

Q. How many times?

A. I went there about four times, I guess, four or five times.

Mr. Snow: Nothing came of all this. What is the good of going into it? It is wholly immaterial.

Court: Unless there was some admission on the relation of master and servant.

Q. Now, what did Mr. Campbell—what did Mr. Kennedy do after you saw him—after you had seen the doctor?

A. Mr. Kennedy said to me he was going to send a night letter right away that night to Swayne & Hoyt in San Francisco, and he waited an answer, and he told me to come back in a day or two, and he would surely have an answer.

Q. What to do?

A. Yes, sir, what to do.

Q. I mean what to do—what were you trying to do?

Mr. Snow: I object to that. No settlement there.

A. We were trying to get a settlement. [53]

Mr. Giltner: I think so; circumstances—he was negotiating.

Court: Suppose he did. We don't want to go into their intention to settle. That wouldn't be competent.

(Testimony of Gustav Barsch.)

Q. Who was the dock foreman over you?

A. Mr. Dosch.

Q. And who was the general superintendent over all of you there?

A. The first officer.

Q. Whom did you say?

A. The first officer—the name was Ahlin.

Q. The mate?

A. Yes, the mate.

Q. Did you take orders from him?

A. Yes.

Q. And also from Mr. Dosch?

A. Yes.

Q. How old are you?

A. Fifty years.

Q. How old were you when this accident happened?

A. 49.

Q. How much were you earning a month?

A. A month? About \$100.00.

Q. Did you have steady employment?

A. Well, pretty steady.

Q. Would you average \$100 a month during the year?

A. I guess I did, probably.

Q. Now, I wish you would state, Mr. Barsch, whether you were given any notice by any one that the winch driver was going ahead with this load that struck you?

A. No notice given whatever.

Q. State, Mr. Barsch, what, if anything was

(Testimony of Gustav Barsch.)

there that would prevent the winch driver from seeing you while you were working at the time the accident happened? [54]

A. The ship was above the dock.

Q. How high?

A. Oh, I should think about seven or eight feet, and the winch driver is situated in the middle of the ship, and he cannot see over the ship's side.

Q. What were your duties, Mr. Barsch, on the dock there? What did your duties call you to do?

A. Landing those loads what come out of the ship onto four-wheeled trucks.

Q. And state to the jury how you would land them. Would the load be in the air, or how would you do it?

A. When the load come out of the ship's hold with the offshore winch fall or the inshore winch fall, we get hold of it as soon as it gets above the hatch combing, and the offshore fall will slack away, pulls it out, and as soon as it is clear of the ship's rail, it is lowered down sufficiently so we can get hold of it; we get hold of the load.

Q. Is that before it strikes the dock, you get hold of the load?

A. Yes, sir.

Q. You have to take hold of it?

A. Yes, we got to take hold.

Q. While it is swinging in the air?

A. Yes and we get hold, and steady the load and land it. And after it is landed, we will nip

(Testimony of Gustav Barsch.)

the sling, if general cargo, we nip the sling on top, and one man holds that nip of the sling, and the other man gets hold of the handle, and pulls the load in, the two of them. One of them shoving and the other pulling.

Q. Now, did you at any time give the engineer or winchman, or did any one give the winchman any notice to go ahead?

A. At that particular time?

Q. Yes.

A. Not that I know of.

Q. Did Mr. Wolff give him notice to go ahead? [55]

A. No.

Q. Did Mr. Ferguson?

A. Not to my knowledge.

Q. Did you?

A. No.

Q. Were you prepared for him to go ahead at the time the accident happened?

A. No.

Q. How large a beam was this?

A. It is a beam about 16 or 18 feet long. What is called structural iron; it is double T iron; say, for instance, that this is the middle of the beam, and there is a flange extending on each side that way, take both hands there, the flange there, and the flange over here on this side, extending about three inches over the center, flat part of the beam.

Q. Did they have a signal man there at the time?

(Testimony of Gustav Barsch.)

A. There was none.

Q. Did they at any time have a signal man there?

A. No.

Q. Now, how did you do this work before?

A. We hollered to the winch driver to come back, or go ahead, as the case required.

Q. What is the custom in loading and unloading vessels, cargoes of vessels in this port, where the winchman is not able, or not in position to see the men working on the dock or in the hold, as to having a signal man to signal between them?

A. It is a custom; it certainly is.

Q. Mr. Barsch, what effect has this injury to your leg had upon you, in your following your vocation? What effect has it upon you, in your being able to follow your vocation?

A. No, not the same extent—I can't follow it because I am not able to.

Q. What is your—what are your duties generally as a longshoreman? [56] What do you do?

A. There was a time I am carrying wheat or stowing wheat in a ship or loading lumber.

Q. What do you do? Does that necessitate you to lift it, and carry it?

A. Yes, you get the weight on your shoulder.

Q. What effect does that have upon you, if you would carry a heavy weight upon your shoulder—upon this leg?

(Testimony of Gustav Barsch.)

A. It would make it stiff; got continual pain in there, makes it stiff; it is a numb feeling.

Mr. Snow: He has gone over all that.

Mr. Giltner: No, not that feature he didn't.

### CROSS-EXAMINATION.

Questions by Mr. Guthrie:

Mr. Barsch, where did you say you lived in Portland?

A. 113 Ninth Street.

Q. Near the corner of Ninth and Glisan?

A. Yes, sir.

Q. And about what had been your earnings before you were hurt?

A. About \$100 a month.

Q. And about how many days in the month did you work? About how many days a month, ordinarily, would you average?

A. Averaged? I averaged from twenty-two to twenty-five days, except worked a good deal Sundays, too.

Q. And what is the prevailing wage that you received?

A. The prevailing wage is different wage scales.

Q. As a wheat man, what was your wage?

A. Fifty-five cents an hour.

Q. As a lumberman, what was your wage?

A. Fifty cents an hour.

Q. What did you get on overtime?

(Testimony of Gustav Barsch.)

A. Overtime on wheat was \$1.00 an hour, and lumber \$0.75 an hour. [57]

Q. Now, you have had a good deal of experience in longshoring, haven't you?

A. I have.

Q. How many years have you worked here in Portland?

A. Here in Portland? Let's see. I started to work in 1890, and worked until 1897, I think.

Q. Have you worked since then?

A. Oh yes. I didn't work in this place.

Q. Steadily here?

A. No. I didn't work in this place alone. I worked in other places.

Q. Well you have worked on pretty nearly all the different boats that come into Portland, one way and another?

A. Yes, and different ports.

Q. Have been on steamers and on all kinds of sailing craft too?

A. Have worked on steamers, and sailing craft too.

Q. And steam schooners, such as the Camino and Navajo. You worked independently on those boats, and not under master stevedores, the same as you worked for the Stevedoring Company.

A. For the Stevedoring Company.

Q. You work under Brown & McCabe sometimes, don't you?

A. Yes, sir.

Q. And the McCabe Company as well?

(Testimony of Gustav Barsch.)

A. Yes, sir.

Q. And you worked independent on these different boats?

A. Yes, sir.

Q. The Arrow Line?

A. Yes.

Q. And the Paraiso, and some of those?

A. Yes.

Q. So you had a great deal of experience?

A. Yes.

Q. Now, you say you went down to work on the Camino for Swayne & Hoyt? [58]

A. Yes.

Q. Who told you that you were going down there to work for Swayne & Hoyt?

A. I seen Swayne & Hoyt's name on the bow of the Camino.

And when you saw that name on the Camino, that is the way you knew you were working for Swayne & Hoyt?

A. Why, certainly, must be the way. If you see a name on the ship, that is the company.

Q. Well, you saw the name there, but as I understood it, that name said "Manager." It didn't say they operated the boat for themselves, but said "Manager," didn't it? Didn't it say "Swayne & Hoyt, Managers?"

A. Swayne & Hoyt, Managers?

Q. Swayne & Hoyt, Managers.

A. I guess it may be that. I only looked at

(Testimony of Gustav Barsch.)

the Swayne & Hoyt name. May be Swayne & Hoyt, Managers.

Q. So you were sure you were working for Swayne & Hoyt?

A. Yes.

Q. You felt you were sure of that, and you looked to them for your compensation?

A. Yes.

Q. And if you hadn't been paid, you felt you could have sued Swayne & Hoyt for it, didn't you?

A. Sure.

Q. And you would even have gone so far, if you had been obliged to, to have brought action against them to collect?

A. Yes.

Q. And you wouldn't have held the vessel for that work at all? You wouldn't have libeled the boat?

A. That depends on—I don't know enough about marine law; if I libel the ship, I can't libel the ship myself. I have to give it into some competent hands that would know the way about it. I wouldn't know how to go about that. [59]

Q. I know that, but the point is, whether you were looking to the ship as security for your wages as well, or whether working independently. Do you remember? You didn't think anything about it, as a matter of fact, did you?

A. I couldn't tell whether I looked to the ship

(Testimony of Gustav Barsch.)

or Swayne & Hoyt people, I couldn't tell. I left those questions to my lawyer.

Q. Then you are not so sure whether working for Swayne & Hoyt?

A. I was sure working for Swayne & Hoyt.

Q. You are perfectly sure of it?

A. Yes, sir.

Q. You were talking to Kennedy, and through that, you were working for Swayne & Hoyt?

A. Mr. Kennedy said "you were working for Swayne & Hoyt."

Q. He gave you a letter to Swayne & Hoyt when you went south?

A. Yes, sir.

Q. And you expect by that to show you intended Swayne & Hoyt to stand for your damages?

A. Yes.

Q. That was your idea all the way through?

A. Yes, sir.

Q. Can you remember what time it was you were in San Francisco? Was it in May a year ago?

A. Yes, somewhere in May.

Q. Now, Mr. Barsch, do you recall the circumstances of your bringing an action for this same injury, in which you filed a complaint stating the same facts that you state today in this court, in the state court, in which you swear over your oath, that you were employed by the American-Hawaiian Steamship Company; and you sued

(Testimony of Gustav Barsch.)

the American-Hawaiian Steamship Company, through your attorneys, Giltner & Sewall, in a complaint verified by you on the 18th day of July. Now, why did you sue the American-Hawaiian Steamship Company, if you knew you were working for Swayne & Hoyt? [60]

A. I will leave that to my attorney to answer that question.

Q. Then you didn't know whether you worked for Swayne & Hoyt on the 18th day of July last?

A. 18th day of July?

Q. I have a complaint here, a certified copy, from the state court, which says the 18th of July. If that isn't correct, I would like to know. It is verified on the 18th of July, and it says, "Filed July 18, 1913." How, there is an action in which you swear, among other things, that you were employed by, and were working for, the American-Hawaiian Steamship Company, assisting in unloading structural iron beams, about 18 feet long, and weighing about 800 pounds each, from the steamship Camino onto a truck on the dock, and after the same were landed upon the dock, taking them away and storing upon the dock; and then you go on in almost the identical words of the action you have here now against Swayne & Hoyt. Now, you weren't so sure whether Swayne & Hoyt when you sued the American-Hawaiian Steamship Company, were you?

(Testimony of Gustav Barsch.)

A. I wasn't so sure.

Q. Then why did you say awhile ago, you knew it was Swayne & Hoyt?

A. I knew it was Swayne & Hoyt—I seen the name on it.

Q. Then why didn't you sue Swayne & Hoyt on the 18th day of July?

A. I leave that to my lawyer to answer that.

Q. As a matter of fact, you didn't know anything about it—isn't that the fact, Mr. Barsch?

A. Oh no.

Q. Then why did you sue them? You must have known something about it. You have put your name here to a note you did know these facts now; why do you say you don't? You remember bringing this suit against the American-Hawaiian people, don't you?

A. I think there was an action taken against them. I am not sure.

Q. You can't remember that far back?

A. I left this over to my lawyer. I says to him, "I have got a damage [61] suit," and he looked the matter up.

Q. And Mr. Giltner investigated these matters for you, I suppose, did he?

A. I guess so.

Q. You didn't tell him the facts about Swayne & Hoyt? Is that right? Didn't tell him this you tell today, you now say Swayne & Hoyt, because you went down and looked at that Arrow on the boat?

(Testimony of Gustav Barsch.)

A. What is that?

Q. You didn't tell Mr. Giltner last July, when you sued the American-Hawaiian people, how you went down there and saw a painted Arrow, with Swayne & Hoyt's name on the boat. Is that right?

A. I don't know whether I did or not.

Q. You don't remember what you told him. Then why did you let him—you told Mr. Giltner you had been down to San Francisco, didn't you?

A. Yes, sir.

Q. And you told him you had been to the office of Swayne & Hoyt there, didn't you?

A. Yes, sir.

Q. And you talked to Mr. Moran?

A. Yes, sir.

Q. And you came back and talked to Kennedy again?

A. Yes, sir.

Q. All for Swayne & Hoyt?

A. I don't know—

Q. Oh, you don't know whether Swayne & Hoyt—

Mr. Giltner: Wait a minute; give him a chance to answer. What were you going to say?

A. I don't know. I was under the impression to sue both companies.

Mr. Giltner: That is right.

Q. You thought you would sue both companies?

A. I didn't know exactly whether they were

(Testimony of Gustav Barsch.)

operated by Hawaiian Company, or whether they were operated at that time directly by the Swayne & Hoyt people. [62]

Q. And you found you were mistaken about the American-Hawaiian people, is that right?

A. I was mistaken.

Q. And you might just as easily be mistaken now about Swayne & Hoyt?

A. No.

Q. Why shouldn't you?

A. No, no mistake there.

Q. What difference can there be?

A. The difference be because they acknowledged they had; they acknowledged it.

Q. When did they acknowledge it?

A. In San Francisco, when I was there.

Q. Why did you come back and sue the American-Hawaiian people two months afterward then? If they acknowledged for Swayne & Hoyt, why did you come back and sue the American-Hawaiian people?

A. At that time?

Q. Yes.

A. I don't,—I left everything to Mr. Giltner, and didn't care about it any more—didn't bother any more. Didn't go up to his office, and I left that.

Q. Now, as a matter of fact, in all of this matter, put in a short way, is this: You didn't know who you were employed by, but were working for the steamship Camino. Isn't that a fact?

(Testimony of Gustav Barsch.)

Don't know whether the American-Hawaiian Company, or whether Swayne & Hoyt, or not. You knew you were working for the steamship Camino. Isn't that a fact?

A. I was working for Swayne & Hoyt, I found out afterwards.

Q. After you found out, you sued the Hawaiian Company?

A. No.

Q. You mean to say, on July 18th, then, you didn't file this complaint; you didn't sign your name, and verify a complaint in the state court?

A. Yes.

Q. You did? [63]

A. If my name is there, I guess I signed it.

Q. Yes, this copy shows, certified by the officers of the state court, you did. Now, that was two months after you had been down to San Francisco, or nearly, from May to July.

A. Yes, May to July.

Q. Now, if you were sure it was Swayne & Hoyt, I say again, why did you sue the American-Hawaiian Company?

Mr. Giltner: I think there should be some end to this. He has asked it seven or eight times. He said he left it to the attorney. That was the best answer he could give, and his attorney said he could sue one or both.

Mr. Snow: We wish to go on.

Court: I think he has answered as well as he can.

(Testimony of Gustav Barsch.)

Mr. Giltner: He has answered as well as he can. I will explain it.

Mr. Snow: Well, you will go on the witness stand before you explain to this jury.

Q. You had worked for the steamship Camino, hadn't you, before that particular trip?

A. I had.

Q. And you had gone up to Mr. Kennedy's office and gotten your pay, hadn't you?

A. Yes.

Q. You are able to write your own signature, aren't you?

A. Yes.

Q. You are able to read your own handwriting, aren't you?

A. Yes.

Q. And you would recognize it if I showed it to you?

A. Yes.

Q. So I will show you now, Mr. Barsch, a payroll for Voyage No. 4, Camino.

Mr. Giltner: I object to that as not in evidence here.

Mr. Guthrie: We are going to use it in a minute. Wait a minute.

Court: Let him see it. [64]

Q. On which I show you, on the second page, signature "G. Barsch." I will ask if that is your signature?

A. Yes, that is my signature.

Q. And this purports to show you drew pay?

(Testimony of Gustav Barsch.)

A. Yes.

Q. And you signed this in Mr. Kennedy's office?

A. Yes, in Mr. Kennedy's office.

Q. You would be able to know what that was when you were looking it over?

A. I don't look at anything. The clerk put this in front of me, and I signed it.

Q. No reason why couldn't read it if you wanted to, was there?

A. We was not asked to read that.

Q. That is true; but you do not sign your name on being asked, to anything?

A. They only said to me to sign this payroll. "You got so much money, sign this." They put it in front of you, you sign your name, and they take it away.

Q. Do you make a practice of not reading what you sign?

A. The payroll, as long as I see my money is correct.

Q. You don't care where you get it from. Whether it says the steamer Camino, or the steamer Navajo, you don't care.

A. If I am not working for them, it would be different.

Q. Then you didn't read this. Is that what I understand?

A. Yes, as much as—when we go in this office, Mr. Kennedy or his clerk says, "This is the

(Testimony of Gustav Barsch.)

payroll for the steamer Camino" or any other steamer, sign it.

Q. So you know you are signing for the payroll of a steamer?

A. Yes, been working there.

Q. And the fact is, you were working for that steamer?

A. I was working there on the dock, helping the unloading that steamer Camino.

Q. The clerk says, "Here is a payroll for the steamer?" [65]

A. Yes.

Q. You sign your name, that is all. Is that right?

A. Yes, that is all.

Q. So you knew, from what the clerk told you, you were working for the steamer?

A. No, didn't say we were working for steamer. Was unloading for Swayne & Hoyt, as much as I understand.

Q. Did the clerk tell you you were working for Swayne & Hoyt?

A. It is their steamer.

Q. I don't think you are qualified to say, is their steamer.

Mr. Giltner: The steamer didn't pay you.

Mr. Guthrie: I think the best evidence would be the payroll.

Court: I suppose it is the same as in every office. They pass out the payroll and say sign it, and they never look.

(Testimony of Gustav Barsch.)

Mr. Guthrie: I offer this in evidence, No. 4.  
Marked "Defendant's Exhibit B."

Q. This is your signature on Exhibit A. This is your signature about the middle of the page on this one?

A. Is that the same one?

Q. No, this is another. This is No. 12.

A. Yes.

Q. Is this your signature, is all I want to know.

A. The signature is right, but the pay is not right.

Q. Well, I don't care about that. The only thing is whether this is your signature.

A. I didn't take the pay at all from that steamer.

Mr. Giltner: What is that?

A. I didn't take the pay from that steamer until ten weeks after on that payroll.

Mr. Giltner: When did you sign that?

A. I signed under protest. It was put to me to sign that payroll so they could forward to San Francisco. I signed it about three weeks [66] afterwards, after it was made out; three weeks after the steamer left, I signed it under protest. I says "I don't know why I signed here for and how it is coming out." I says "I am hurt and I don't know how it will come out, whether I sign this or whether I got a right to sign this or not." So I don't sign it, but the clerk told me, he says, "This payroll has got to go to San Francisco; got

(Testimony of Gustav Barsch.)

to go to Swayne & Hoyt in San Francisco, and we can't send it off," and he says, "You are the only one not signed." So under that protest I signed it, but didn't take the money.

By Mr. Giltner: Did you take the money?

A. No, I didn't.

Q. So when you protested then, you didn't even read it over to see what it was about?

A. The clerk told me it was the payroll.

★ ★ ★ ★ ★ ★

Q. Mr. Barsch, you recall my referring to the action you brought in the State Court, yesterday?

A. In which court?

Q. You remember my referring yesterday to an action you had brought in the State Courts?  
[67]

A. Yes.

Q. Against the American-Hawaiian people?

A. Yes.

Q. Do you know whether or not that action is still pending?

A. I guess my lawyer will answer that question, whether pending or not.

Mr. Giltner: I will say to you it is still pending.

Mr. Guthrie: Then I would like to introduce the certified copy of the complaint in evidence.

Mr. Giltner: I don't see what relevancy it has here. I desire at this time, if the Court please, to go on the stand and testify to that, but I don't

(Testimony of Gustav Barsch.)

want to waive my rights to address the jury. (To Mr. Guthrie) You can introduce this.

Marked "Defendant's Exhibit C."

Mr. Guthrie: I would like to read this to the jury so it may be understood. (Reads) "Gustav Barsch, Plaintiff, vs. American-Hawaiian Steamship Company, Defendant.

"Plaintiff above named, for cause of action against the defendant above named, complains and alleges:

First, that said defendant now is, and was, during all the times herein mentioned, a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of California, and as such by and through its agent was doing business in the City of Portland, Multnomah County, Oregon, during said time.

Second. That said plaintiff with others, on or about the 31st day of March, 1913, about 7:30 P. M. of said day, was employed by, and was working for the American-Hawaiian Steamship Company, said defendant, in assisting to unload structural iron beams about 18 feet long, and weighing about 800 pounds each, from the steamship Camino onto a truck on the dock, and after the same were landed upon said truck, in taking them away and storing them on the dock.

Third. That during the times herein mentioned, said steamship was berthed at a dock in the Willamette River, in Portland, Multnomah [68] County, Oregon, and that said steamship

(Testimony of Gustav Barsch.)

and its tackle, apparel, furniture and machinery, hereinafter referred to and mentioned were in the possession of, and controlled by said defendant for the purpose of unloading said iron and while the defendant and said plaintiff were unloading said structural iron beams, they were doing it by means of a double winch which was operated by steam power, and which was located upon the deck of said ship by an engineer and a foreman in the employ of said defendant, booms, cables, falls, hooks, slings. That in unloading said vessel, said sling and falls were fastened by means of a hook to each end of said structural iron beams, which said sling and fall were fastened or connected with a cable which would around the drum of said steam winch, and then said beams were raised by means of said steam winch and apparatus from the deck of said steamship into the air, and lowered over the rail of said ship down to and onto a truck on said dock, where said plaintiff and his fellow servants would receive, unloosen and place said beams upon said truck, and then remove them out of the way for the next load, and store them away and on said dock. That said work in which said defendant was engaged involved a risk and danger to the life and limb of said plaintiff and his fellow employees. That from the position he occupied on said vessel, the engineer operating said steam winch.”—Now, the rest we can waive the reading to the jury.

(Testimony of Gustav Barsch.)

Mr. Giltner: Read it all.

Mr. Guthrie: I have no objection to it all being read. The only thing I want it clearly understood is, it is the same action, the same thing averred against the American-Hawaiian people, and it was verified at the end by Gustav Barsch that these facts were true July 18, 1913. If Mr. Giltner wants to read the rest, he can in the argument. [69]

\* \* \* \* \*

Q. Did any one ever at any time tell you that the Western Steam Navigation Company was the owner—were the people that you were working for on the Camino when you were hurt?

A. I never heard of them.

Q. Never heard of it?

A. No.

Q. Did Swayne & Hoyt tell you?

A. No.

Q. Did Mr. Kennedy tell you?

A. No.

\* \* \* \* \*

RECALLED ON DIRECT EXAMINATION.

Q. And who put you to work there that day when you went down there?

A. Where, on the dock?

Q. Yes.

A. Mr. Dosch.

Q. Now, Mr. Dosch assigned the longshoremen to their respective positions there?

(Testimony of Gustav Barsch.)

A. Yes, sir. [70]

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RE-CROSS EXAMINATION.

Questions by Mr. Guthrie:

Mr. Barsch, when you have worked on all these other boats, did you know who the owners were?

A. On the other—which other boats do you mean?

Q. Well, you say from time to time, different years you worked on other boats.

Mr. Giltner: That is incompetent.

Court: Let him answer.

Q. Did you know the owners of the Navajo when you worked on her?

A. I wouldn't know. The owners of the Navajo been changed recently, and been changed so very often, I couldn't tell.

Mr. Snow: Just answer the question.

Q. When you worked on the Navajo, did you know who her owners were?

A. Who her owners were that is? I don't know.

Q. As a matter of fact, did you ever know who the owners of the boats are, unless the boat was well-known in the harbor — everybody knows?

A. Yes, some boats will know the owners; others I don't.

Q. How would you know?

106     *Swayne & Hoyt, Inc., a Corporation,*  
(Testimony of Gustav Barsch.)

A. Principally as stated in the guide that is hanging in our hall, that so and so did, and others it may not state the owners, and at times I read in the paper, in the newspaper, who the owners are.

Q. And you very frequently work on boats whose owners you don't know?

A. Yes.

Q. So it is nothing unusual that you didn't know who was the owner—that the Western Steam Navigation Company was the owner of the Camino?

A. Never heard of that company.

Q. Well, you never heard of the owners of some others of the boats either, did you?

A. What did you say?

Q. You never heard of the owners of some of the other boats, did you?

A. They are too many to recollect. I couldn't recollect it, the owner of every steamer that comes in here. [71]

R. Giltner, counsel for the plaintiff, and in charge of the trial of the case for the plaintiff, offered himself as a witness and testified substantially as follows: The question was asked Mr. Barsch yesterday as to why he had sworn to the complaint against the American-Hawaiian Steamship Company, in which he set forth practically the same allegations as set forth in the complaint against the Swayne & Hoyt people, and not being

(Testimony of R. Giltner.)

able to answer the question he referred it to his attorney.

I desire to state to the jury the reason why the complaint was filed for Barsch against the American-Hawaiian Steamship Company. Mr. Barsch came into the office and told me the circumstances of this injury. He told me that he was working for Swayne & Hoyt, he believed. At the time that I filed the complaint against the American-Hawaiian Steamship Company I knew that C. D. Kennedy was the agent of the steamship American-Hawaiian. I knew that the steamship Camino landed at the American-Hawaiian dock. I knew that Mr. Barsch was paid in Mr. Kennedy's office for the work he did on the Camino and I concluded from that—by knowing that he was the agent at that time—that I had a good cause of action against him. While I believed that the testimony against the Swayne & Hoyt people was stronger, I did not know at that time that there was a verbal agreement between Mr. Kennedy and the Swayne & Hoyt people that he should act as agent for them here. I wasn't able to prove the agency. I knew that in suing these people I might get something in regard to Swayne & Hoyt. I sued them and I knew as an attorney that I could sue them jointly or singly. I considered that I did not have sufficient evidence against Swayne & Hoyt outside of the direct contract of agency between Swayne & Hoyt and Mr. Kennedy. Mr. Johnson, attorney for Teal &

(Testimony of R. Giltner.)

Minor, after they were sued came over and saw me. He said "You have the wrong pig by the tail." I then went to see Mr. Kennedy and succeeded in getting from Mr. Kennedy a statement that he was acting as agent for the Swayne & Hoyt people at the time this accident happened and that the [72] Swayne & Hoyt people paid this man Barsch for his services on the boat at that time. I knew that, and I knew that the Swayne & Hoyt people were liable to this man and that is the reason why I sued, as I knew I could sue them both and had a right to sue them both under the law.

On cross-examination this witness testified in answer to questions propounded by Mr. Snow:

Now, Mr. Giltner this complaint was filed in the State Court about the month of July—July 18, 1913. You had talked with Mr. Barsch before you had filed this complaint in the State Court, hadn't you?

A. Yes, I did.

Q. Had he said anything to you about the American-Hawaiian Steamship Company?

A. He told me what I was trying to tell you here and you stopped me from telling. I say, yes he did.

Q. Wait a minute. He told you about the American-Hawaiian Steamship Company?

A. Yes.

Q. And he told you about the Swayne & Hoyt people?

(Testimony of R. Giltner.)

A. Yes.

Q. And he told you about the trip to San Francisco?

A. Yes.

Q. And he told you about his talk with Moran?

A. He did.

Q. And did he tell you about his talk with Mr. Campbell?

A. He did.

Q. He told you about that talk, did he?

A. Yes, that is not in evidence here though.

Q. Oh yes, it is.

A. Is it? Will you consider this in evidence?

Q. Mr. Barsch has testified to that. [Bill of Exceptions, b2] [73]

(By the Court: He spoke of the talk with Mr. Campbell.)

Q. Now, Mr. Giltner, when he came back from San Francisco, it was some time in the month of May, wasn't it?

A. I can't tell you about that.

Q. Refresh your recollection.

A. I can't because I don't remember.

Q. Well, he came back here before the month of July, didn't he?

A. Well, I would have to refresh my memory on that if I have any papers here that I can.

Q. Well, here is a certified copy of the complaint and if you have other data—

A. Hand it to me. I don't know when he

(Testimony of R. Giltner.)

came back, whether he did—whatever time that he signed any papers—why whatever the time I will admit that is the fact. Whatever that may be, you can state any time.

Q. I am only stating facts. I am not stating anything else.

A. I didn't accuse you of doing that, Mr. Snow.

Q. Wait a moment. We will get around to that. Now. Mr. Giltner, this complaint is verified July 18, 1913. This was some three or four months after this accident. Now, when he got back from San Francisco, he told you of his interview in San Francisco?

A. Later; later, yes.

Q. Now did you know—do you know that the Camino had labeled, or printed on her bow, as you say—

A. Yes he told me that was printed.

Q. Wait a minute. Wait until I get through my question. You are going off halfcocked. Wait until I get through my question.

A. I don't think you are warranted in making such a statement, that I am going off halfcocked.

Q. Wait a minute, and we will get to that. You are counsel in this case. Did you know at that time, at the time this complaint was filed, that Swayne & Hoyt's name was painted on the bow of the Camino "Swayne & Hoyt, Managers"?

A. I knew that Swayne & Hoyt's name was

(Testimony of R. Giltner.)

painted on the bow, but I didn't know "Managers." [Bill of Exceptions, b3] [74]

Q. Then this little tag that has been offered in evidence here by yourself, the little tag that indicates Swayne & Hoyt, Managers, which you say was posted on the bow of the vessel—the testimony shows was posted on the bow of the vessel—you hadn't seen that tag?

A. No, I got that tag yesterday from Mr. Williams.

Q. You hadn't learned anything at all about the fact?

A. Not the word "managers," no.

Q. But it appears "Swayne & Hoyt, Managers" is painted on the bow of the boat?

A. Yes.

Q. You knew that fact, did you?

A. Yes, and thought that a very significant fact.

Q. You didn't think it significant enough, though, to bring suit against Swayne & Hoyt at that time, did you?

A. I did not, for this reason.

Q. I didn't ask for the reason.

A. No, I didn't; and I want to give the reason, if you permit.

Q. You answer the question, and you can give the reasons later.

A. I have a right to give them now.

Court: You can explain afterwards.

Q. You can explain afterwards. Now, Mr.

(Testimony of R. Giltner.)

Giltner, when you filed this complaint against the American-Hawaiian Steamship Company, you knew, or supposed you knew all of the facts which Barsch had spoken to you about, of his visit to San Francisco which Barsch had spoken about; of his having been engaged by Swayne & Hoyt here, or Schneider had spoken of his being engaged by Swayne & Hoyt?

A. Schneider hadn't told me.

Q. Schneider hadn't told you?

A. No, it was only three days ago.

Q. You knew what—

A. I knew he always contended he was working for Swayne & Hoyt.

Q. You knew he said that?

A. Yes, I knew that. [Bill of Exceptions, b4]  
[75]

Q. You knew he claimed to be working for Swayne & Hoyt?

A. Yes.

Q. And then brought your complaint against the American-Hawaiian Company?

A. Yes.

Mr. Giltner: I knew he always claimed he worked for Swayne & Hoyt, but I figured that those declarations, and the fact that the name might be painted on the prow of the boat, were not sufficient to bind these people as the employers of this man, nor would the declaration of Mr. Kennedy that he employed them. I knew that wouldn't be admitted in evidence here to bind

(Testimony of R. Giltner.)

Swayne & Hoyt, until I could prove before-hand that he was their agent. \* \* \* \* \* And that I had no evidence of that kind, in order to bind them, and I considered the testimony weak as against Swayne & Hoyt, but I did know that he was agent for American-Hawaiian Steamship Company. I did know that he was paid at the American-Hawaiian office. I did know that the American-Hawaiian—that this boat landed at the American-Hawaiian Steamship Company's dock, and I satisfied myself that if I brought an action against these people that something might come out, whereby I could get them all, and I have got them all now.

Q. So you have.

A. And they are all liable.

Q. (By Mr. Snow:) Mr. Giltner, you are interested financially in this case, aren't you?

A. That is none of your business.

Q. Yes, yes, you are a witness in this case.

A. That is none of your affairs. I am interested, of course, as you are too.

Q. Are you interested financially in this litigation?

A. That is my look-out and not yours.

Q. You decline to answer that question?

A. I am interested, but the extent I am interested is none of your affairs.

Q. Then you decline to answer?

A. I decline to answer to you what I am

(Testimony of R. Giltner.)

doing, or what my business relations are to my clients.

Q. Have you an arrangement whereby you may get some benefits through this litigation? [Bill of Exceptions, b5] [76]

A. Mr. Snow, that is merely a technical question you are asking to prejudice this jury against my client. If I got all of that, Mr. Snow, it wouldn't have anything to do with whether or not my claim before this jury was a just one.

Q. I wouldn't be surprised if you did get it all. You decline to answer to this jury what your interest in this case is.

A. I decline to say what my agreement is with Mr. Barsch.

Q. You decline to testify you are financially interested in this case?

A. I want to say I don't work for nothing, but if a man comes to me, and he has a meritorious case, and he can't pay, I have to get my pay in some way or other, and if his case is meritorious, and he can't pay, I will take his case for nothing, and have done it frequently.

Q. Have you got this case for nothing?

A. No, I have not. I have his case on a contingent fee, if you want to know about that.

Q. That is all.

A. This is all done to prejudice the jury in this matter. I think the jury sees that.

The witness Giltner prefaced his evidence with the following statement:

(Testimony of R. Giltner.)

“The question was asked Mr. Barsch yesterday as to why he had sworn to the complaint against the American-Hawaiian Steamship Company in which he had set forth practically the same allegations as set forth in the complaint against the Swayne & Hoyt people and not *bine* able to answer the question he referred it to his attorney.”

Thereupon the plaintiff rested.

## **DEFENDANT'S EVIDENCE**

A. R. Williams, a witness called in behalf of the defendant, having been duly sworn, testified substantially as follows: [Bill of Exceptions, b6] [77]

### **DIRECT EXAMINATION BY MR. GUTHRIE.**

Q. Mr. Williams, for whom were you working and what was your vocation on or about the 31st day of March, 1913?

A. I was working for two companies at that time. I was working for the American-Hawaiian Steamship Company and—

By Mr. Giltner: What is that? [78]

A. I was working for two companies, was working for the American-Hawaiian Steamship Company and also was working for Swayne & Hoyt.

Q. What was your position, Mr. Williams?

A. In working for American-Hawaiian Steamship Company, I was receiving clerk, and in

(Testimony of A. R. Williams.)

working for Swayne & Hoyt, I was time keeper, or assistant supercargo, or foreman.

Q. And as time keeper, was it your duty to make these payrolls?

Mr. Giltner: I object to leading the witness.

Mr. Guthrie: I don't care to kill a lot of time with this.

Court: Go ahead.

Q. Was it your duty to make up the payrolls?

A. It was.

Q. And are these payrolls, exhibits A and B of defendant's, signed A. R. Williams, prepared by you?

Mr. Giltner: Let's see that last exhibit you put in.

Mr. Guthrie: All right; he has it in his hand.

A. This payroll is not in my handwriting.

Q. Is this one?

A. It is, yes, sir.

Mr. Giltner: Which one is this?

A. This is Voyage No. 4 and this is Voyage No. 12.

Mr. Guthrie: He identifies Voyage No. 12.

A. Yes, I made up that payroll myself there.

Q. And does the payroll show accurately the amount of work done, the number of hours and pay due each man?

A. It does.

Q. Do you remember the circumstances of Gustav Barsch, a longshoreman who claims to

(Testimony of A. R. Williams.)

have been injured on the dock about the 31st day of March at 7:30 in the evening?

A. Yes, sir, I do.

Q. At what dock was that?

A. That was a dock called Albers No. 3. [79]

Q. What steamship was being unloaded?

A. The Camino.

Q. Will you describe and tell the jury what cargo was being taken from the steamship at the time?

A. You mean at 7:30 in the evening?

Q. At the time Gustav Barsch claimed to have been injured.

A. Steel girders, about 18 feet long, and called eye beams, with a flange on both edges.

Q. The testimony of one of the witnesses yesterday, Mr. Wolff, said these girders were directed to Swayne & Hoyt. Do you recall whether that was the case or not, whether they were marked "Swayne & Hoyt"?

A. No, sir, they were not.

Q. What were they marked?

A. They were marked "Northwest Steel Company."

Q. And the shipment was to the Northwest Steel Company of this city?

A. Yes, sir.

Q. Do you know if there was any cargo being taken out of the hold of the vessel at that time that was shipped as Swayne & Hoyt's goods?

A. Not as Swayne & Hoyt's goods. Once in

(Testimony of A. R. Williams.)

awhile you would find a case would be marked "Care of Arrow Line," or "Shipped via Arrow Line."

Q. That would be some goods that were trans-shipped would it; having been started by another route, and then carried subsequently by the Arrow Line?

A. Either that way or routed in San Francisco. For instance, if I would ship goods to you from San Francisco, to Portland, I would mark the goods "Care Arrow Line."

Q. I wish you would tell the jury what you know of the circumstances of Mr. Barsch's injury. When did you learn of it? And what was told you by Mr. Barsch at the time.

A. I was on the deck of the ship at the time, and didn't know about the accident until after it had happened, and I immediately went down to Mr. Barsch and told him he had better go home; then I thought better of [80] it and asked him to come up into the mate's room where we could dress his finger. His finger was bleeding badly, and the first officer or mate of the ship, Mr. Ahlin and I, took Mr. Barsch up in the mate's room, and as he said about cutting the piece off of his finger, we did that, dressed it with Fryes Balsam and wrapped it up, and Mr. Barsch complained of his knee. That was after we had his finger dressed, and I asked him to roll up his trousers so we could look at his knee, and he hesitated about doing it at first; then he rolled up his

(Testimony of A. R. Williams.)

trousers and we looked at his knee, and at that time there was no apparent injury to his knee; we could see nothing the matter with it, but he complained of it hurting him, and walked with a limp at that time, but we could see nothing the matter with it at all. I told him to go home, and I let his time run on until the gang that he was working with finished. You see that was about 7:30, and the gang that he was working with, I think, finished at eleven that night. I am not positive, but what I meant, I think his time run on to eleven o'clock. Told him if he felt in condition to come back the next day again, and if not, stay home. He didn't come back the next day, and that is all I know of the case until I was subpoenaed on it.

Q. Now, do you recollect whether or not at the time Mr. Barsch exhibited his knee to you if there was any swelling present at the time?

A. Not at that time, no.

Q. Do you recall a statement that you made to Mr. Barsch to the effect that his knee was in bad shape and was already swollen up?

A. I couldn't have made that statement because—

Q. Did he make such statement?

A. No.

Q. Did you make such a statement to him?

A. No.

Q. You say you allowed his time to run on until the end of that gang that night?

(Testimony of A. R. Williams.)

A. Yes, sir. [81]

Q. So that the payroll time as made up there for Voyage No. 12 would include his time up to and including eleven o'clock of that evening?

A. If that was the time they finished. I am not positive of that.

Q. Until the end of that gang.

A. Yes, sir; it should, unless I made a mistake and left it out. It was my intention to do that.

Q. The amount of money against Mr. Barsch's name shown on that payroll is more, if anything, than the actual time he worked.

A. It should.

Q. The statement was made by Mr. Barsch yesterday the amount of money was incorrect in that payroll. Do you know whether that is the fact or not?

A. No, I do not. Might possibly have been a mistake. There is sometimes mistakes in payment, same as anything else, inaccuracies.

Court: Mr. Barsch's testimony, as I understand, is he didn't receive the money when he signed the payroll.

Mr. Guthrie: Said the money was wrong.

Court: Said he wasn't paid at that time.

Q. Now, you recall a few days ago being in Mr. Giltner's office?

A. Yes.

Q. Was Mr. Schneider present?

A. Yes.

Q. Did you go there with Mr. Schneider?

(Testimony of A. R. Williams.)

A. No.

Q. Were you talking with Mr. Schneider when you were in Mr. Giltner's office?

A. No.

Q. Did Giltner say anything to you about this case?

A. Yes, he did.

Mr. Snow: He didn't ask what he said.

Mr. Giltner: State all I said, what I said. I give you permission. [82]

Mr. Snow: We don't want that.

Mr. Giltner: What you talking about then.

Mr. Guthrie: All I want to know is whether or not you did talk?

A. Yes, we did talk.

Q. Did you hear Mr. Schneider say anything about this case?

A. No, I don't remember Mr. Schneider saying anything.

Q. He was present there with you at that time?

A. Yes.

Q. Now, in this matter of Mr. Barsch's complaint made to you that evening, did he indicate to you that his injury was serious?

A. No, he complained of his knee, and as far as the injury to his finger was concerned, why, I considered that a minor injury.

Q. What is your custom when men are injured, and the injury is at all serious?

(Testimony of A. R. Williams.)

Mr. Giltner: I object to that. I don't think it is competent, what the custom is.

Court: State what was done at that time.

Q. Do you make a report of it in such cases?

A. I do.

Q. Did you make a report in this case immediately?

A. I did not.

Q. Why not?

Mr. Giltner: I object, as incompetent, immaterial and irrelevant.

Court: Let him state why he did not do it.

A. Because I didn't think that the injury necessitated making a report of that kind.

Mr. Giltner: I move to strike that out. I don't think it is competent.

Court: That isn't important. His opinion is of no consequence in this case, except so far as the accident occurred. Tell what occurred and what he saw.

Q. Did the complaint made to you by Mr. Barsch assume such an aspect of [83] seriousness that you were moved to make a report that evening?

Mr. Giltner: I object as calling for the opinion of the witness on an immaterial proposition.

Court: He can testify to what Mr. Barsch did, what claim he made; what he said about it. That is as far as the answer should go.

Q. There has been some testimony in this case, Mr. Williams, about the custom of unload-

(Testimony of A. R. Williams.)

ing vessels like the *Camino*, as to having a hatch tender aboard, and in such situations as obtained at the time of the accident. Will you tell the jury whether or not such is the custom?

A. Well, where the winchman can see the load that he is handling and can see where the load is being landed, it is not the custom to use a hatch tender; but where he can't see it, where it is impossible for the winchman to see, a hatch tender is sometimes furnished, and it is not always a man—a hatch tender might be a man working slinging freight in the hold, or landing loads on the dock, might be a signal man himself. Now, for instance, if a load of freight was made up in the hold of the ship, where the winchman couldn't see it, there would be one man that made up the load would step out into the hatch in view of the winchman and give the signal himself, so he wouldn't be termed as a hatch tender himself.

Mr. Snow: Give the signal. What do you mean there?

A. Well, he gives the winchman the orders to go ahead on the offshore winch or the inshore winch, in order to get the load out in sight of the winchman before it is raised out of the hold.

Q. What was the position of the location of the *Camino* as she was berthed alongside Albers Dock No. 3? Was it possible for the winchman to attend to the duties of the hatch tender?

(Testimony of A. R. Williams.)

A. I think it must have been possible because—

Mr. Giltner: I object to what he thinks.

Court: He is testifying to actual conditions.

Mr. Giltner: Not what he thinks; what were actual facts.

Court: Answer the question. [84]

A. Prior to discharging this steel, they were discharging the general merchandise coming out of the hold, case goods, boxes, made up in rope slings; that is endless slings; and in landing a load of that kind onto a truck on the dock, it would be absolutely necessary for the winchman to be able to see where he was landing the load in order to let go at the proper time, and such being the case, I think it was—you could see the steel beams at the same time.

Mr. Giltner: I move to strike out what he thinks.

Court: The motion is overruled. It is a knowledge of facts he is testifying to. He is not giving an opinion about it.

Q. You have had a great deal of experience in this matter of overseeing the unloading of vessels?

A. Yes, sir.

Q. And you are familiar with the conditions on the Camino and other boats?

A. Yes, sir.

Q. And was that or was it not a safe place to work that obtained that evening?

(Testimony of A. R. Williams.)

Mr. Giltner: I object to that.

Court: That is objectionable. That is the question we are trying here in this case.

Mr. Guthrie: As I understand the testimony of the witnesses as called libellant, they have given their opinion, and if it is fair for one—

Court: Someone may have volunteered that opinion, but that is a question for the jury.

Q. In your opinion, or as you knew the conditions that evening, Mr. Williams, could the winch driver have properly handled that cargo? Could he see its delivery upon the dock?

Mr. Giltner: I object, as calling for the opinion of the witness.

Mr. Snow: That calls for a fact.

Court: State what the facts are, if you know.  
[85]

A. If he couldn't have seen them, would certainly have been a complaint made.

Court: Could he see? Do you know whether he could see?

Mr. Giltner: I move to strike that out.

A. I don't know whether—I don't know, at that time, whether he could see.

Court: Then you don't know.

Q. What was the condition of the level of the Camino to the dock—compared to the dock level?

A. Well, the main deck of the Camino was above the dock, but I wouldn't attempt to say how far above the dock; was above the level of the dock.

(Testimony of A. R. Williams.)

Q. About how far away from those workmen would the winch driver have been stationed?

A. Well, the winch driver is stationed in the center of the ship; well, not exactly in the center of the ship.

Q. Well, about what beam does the Camino have?

Court: How far was that from its side?

Mr. Snow: How far from the edge of the boat?

A. Not over 18 feet.

Q. These girders are how long?

A. They were 18 feet long.

Q. And about how much of the dock was exposed before they were taken under the shed?

A. What?

Q. About how much of the dock would be exposed without a roof over from the ship's rail?

A. At the place where they were landing, it was about 10 feet—10 or 12 feet.

Q. How far back from the edge of the dock would these men ordinarily work—Mr. Barsch and his associates?

A. Well, it depends altogether on the nature of the load that was being landed. [86]

Q. At the time they were unloading this steel? How far out would the crane swing the load?

A. Clear to the door of the dock.

Q. Clear up to the shed?

A. Yes, sir.

(Testimony of A. R. Williams.)

Q. That would be practically the full ten feet?

A. Yes, sir.

Q. What is the beam of the Camino where these winches are situated? Aproximate, of course, is all I can ask.

A. I don't think she is forty feet.

Q. Was this hatch amidships where they were working?

A. Yes, sir.

Q. And the winches are stationed where? About the middle?

A. The exact middle, yes.

Q. Right in the exact middle. About how long a vessel is the Camino?

A. Do you know?

A. 306 feet.

Q. Along midships, how does her deck stand? Is her deck about the same level, or does it rise fore and aft and hollow out in the middle?

A. No, the Camino is pretty flat on top.

Q. She is fairly flat?

A. Yes, sir.

Q. Then her rail is about uniform?

A. Well, there is some sway in it. There is in all ships, but the Camino is fairly flat.

Q. Then your best recollection is that there was no serious complaint made to you by Mr. Barsch that night about his knee?

A. He complained of his knee, yes.

Q. But not as a serious injury?

(Testimony of A. R. Williams.)

A. Oh not enough to warrant me making out a report at that time.

Q. Well, did he treat it as a serious matter, or did he treat it lightly?

Mr. Giltner: I object to that. State what he said, but not the conclusion. [87]

Mr. Snow: That is the impression.

Court: What he said, and how he acted.

A. Mr. Barsch at that time complained of the knee, yes.

Q. Did he indicate whether or not he thought he would be back at work the next morning?

A. I don't remember.

Q. Let me hand you this to refresh your recollection, and tell me whether or not he did. Look this over. It appears over your signature, and refresh your recollection and see if you can answer that.

Mr. Giltner: Before you answer that, I would like to ask a question.

Mr. Guthrie: All right; what is the question?

Mr. Giltner: Can I see it?

Mr. Guthrie: Surely.

Mr. Giltner: I have no objection to this being read to the jury, what he said in here, if the Court please, but I want this read, what he said.

Mr. Guthrie: I am not offering it in evidence.

Court: He is examining it to refresh his memory.

Mr. Giltner: You made this report, did you?

A. Yes, sir.

(Testimony of A. R. Williams.)

Mr. Giltner: This is your signature?

A. Yes.

Q. Now, having refreshed your memory, Mr. Williams, what do you say is the fact as to whether or not any statement was made of his intentions to return to the work in the morning?

A. Well, Mr. Barsch wanted to go home at the time, but I asked him to go up to the mate's room and have his finger dressed, and he complained of his knee at that time, and I told him myself not to come back the next day if he didn't feel able to do so. It has always been my custom, if a man is hurt in the work, if he is able to work at all, to give him a chance, and that is the reason I told him to come back if he was able to come back. [88]

Q. And what did he say as to his willingness to come back in the morning?

A. Oh, he said at that time that he thought he would be back in the morning.

Q. And generally he treated—how did he treat the injury that evening? As serious, or inconsequential?

A. Why, he told me that it pained him a good deal, but there was nothing said at that time about its being a serious thing.

### CROSS-EXAMINATION.

Questions by Mr. Giltner:

Did you not state to Mr. Kennedy, to whom you wrote this letter, in this letter that Mr. Barsch

(Testimony of A. R. Williams.)

claimed his knee was badly hurt?

A. I did.

Q. Then he did claim that his knee was badly hurt?

A. He did.

Q. Now, when you were keeping time there, at the time of this accident, you say you were in the employ of Swayne & Hoyt, and also the American-Hawaiian?

A. No, I didn't say that. I said when I was working for the American-Hawaiian I was working as receiving clerk, and when I was keeping time, I was working for Swayne & Hoyt.

Q. Well, at the time you were keeping time, for these men, you were working for Swayne & Hoyt then, were you not?

A. Yes, sir.

Q. Swayne & Hoyt paid you?

A. No, I was paid—

Q. You were paid through Mr. Kennedy?

A. I was paid through Mr. Kennedy. I was paid by his payrolls as the longshoremen.

Q. He was the agent of Swayne & Hoyt, wasn't he?

A. He was the agent.

Q. Then you understood you were working for Swayne & Hoyt? You were [89] getting your pay from Swayne & Hoyt, weren't you?

A. I wasn't getting my pay directly from Swayne & Hoyt; was getting it from Mr. Kennedy.

(Testimony of A. R. Williams.)

Q. Was Swayne & Hoyt's money paying you? That is the point?

A. Well, I don't know, Mr. Giltner, whose money it was.

Q. But you were keeping the time of these men for Swayne & Hoyt. You were doing that, weren't you?

A. I can't say as to that either. My instructions were to keep time for the men, and the payrolls were made out on these payroll blanks.

Q. Were made on Swayne & Hoyt payroll blanks, were they not?

A. Yes, they were.

Q. And didn't you understand you were making these payrolls for Swayne & Hoyt?

A. Well, I don't believe there was anything said about that at all.

Mr. Snow: Well, I—

Mr. Giltner: This is cross-examination.

Q. You state that you can't say now whether the engineer or the winchman could see these men that were working on the dock at the time of this accident. You can't say whether he could or couldn't—is that it?

A. No, I cannot.

Q. Do you mean to tell this jury that where the winch tender is not able to see the men that are working in the hold of the vessel, or on the dock, that it is not the custom to have a signal man or a hatch tender, to signal as to when to go

(Testimony of A. R. Williams.)

ahead, and when to come back? Do you mean to state that?

A. Well, it depends on circumstances.

Q. Well, I mean when he can't see them when he—

A. Sometimes a regular man is appointed for that duty, and sometimes not.

Q. What is that?

A. Sometimes a regular man is appointed for that, and sometimes not.

Q. Isn't it more often that he is appointed for that duty?

A. It hasn't been the case with us, no. [90]

Q. Then you have not been following that custom?

A. Usually one of the mates acts as signal man.

Q. And the Camino didn't have a signal man that evening, did it, when he was hurt?

Mr. Snow: You say we did in your own complaint.

Mr. Giltner: I beg leave to differ with you on that. We will argue that when the time comes.

Court: Go ahead.

A. Well, the mate of the ship was in—

Q. Well, answer my question yes or no?

A. Well, I don't know.

Q. Well, you know a good many other things that happened there, but you don't know that there was a signal man there?

A. I don't know at the time he was hurt.

(Testimony of A. R. Williams.)

Q. Well, you kept the time of the men after that, didn't you?

A. I did.

Q. Were you on the dock at any time where these men were working?

A. I was on the dock and on the ship.

Q. Were you anywhere around the winches or hatches?

A. Why, very often I had to go down in the hold and hatches.

Q. Well, if there had been a signal man there, you would have seen him, wouldn't you?

A. I probably would have seen him, yes, the same as I would have seen the winchman.

Q. And you didn't see any signal man there, did you?

A. No, I did not; no.

Q. Well, you could have answered that in the first place.

A. You didn't ask me that, Mr. Giltner.

Mr. Giltner: That is all.

Court: You said you kept the time of the men. What did you mean by that? What men?

A. The longshoremen.

By the Court: Not the ship crew?

A. No. [91]

E. P. Dosch, a witness called in behalf of the defendant, having been duly sworn, testified substantially as follows:

DIRECT EXAMINATION BY MR. GUTHRIE.

Q. Mr. Dosch, state what work you were engaged in on the 31st day of March, 1913.

A. Chief wharf clerk for the American-Hawaiian Steamship Company.

Q. You were wharf man?

A. Yes.

Q. And you were working on what dock?

A. Albers Dock No. 3.

Q. And what steamship were you directing the unloading of about the wharf, what cargo?

A. As near as I know it was the steamer Camino.

Q. And of what did your duties consist?

A. Seeing that the freight was carefully distributed through the warehouse where it was consignee marked

Q. Are you acquainted with Mr. E. A. Shneider, Secretary of the Longshoremen's Union?

A. Yes, sir.

Q. State to the jury what is the method by which you employ men, or by which you send orders to the secretary for men to come down to the dock.

By Mr. Giltner: I think he should ask what he did at this time, at the employment of Barsch, instead of going over this whole thing.

Q. Very well, then, I will try to state it definitely. Can you recollect the procedure you went through in securing men to come down to the

(Testimony of E. P. Dosch.)

wharf to work on the steamship Camino about the 31st day of March, 1913? [92]

A. Well, we always used just one system, that is if we want longshoremen; when ordered to get longshoremen, or need them myself, I usually [93] telephone or call at the hall, and get hold of the business agent of the Union, and tell him I want so many men to work, such and such a boat, at such and such an hour, whatever it may be.

Q. In any of these interviews which you have had, either personally or by telephone, with the business agent, did you represent to the business agent that you wished men to work for Swayne & Hoyt?

A. Not necessarily, no sir. At no time; never did.

Mr. Giltner: What was that answer? Not necessarily?

A. No, sir; never did.

Q. Did you ever employ men for Swayne & Hoyt?

A. No, sir, not that I know of.

Q. What is your best recollection of the 31st day of March, 1913? Did you employ men for Swayne & Hoyt that day?

A. Well, I couldn't say, because I never do use any name at all. Never even used American-Hawaiian Steamship Company when I order men; merely call for the men, say I want 30 men at seven o'clock at such and such a dock, for

(Testimony of E. P. Dosch.)

such and such a steamer; whether the Camino, the Navajo, or or the Paraiso, whatever ship wants men.

Q. Your work is general wharf man around there?

A. I am considered chief wharf man down there.

Q. As such chief wharf man, Mr. Dosch, would it have been any of your duty to have instructed the officers or members of the crew, as to what system of signals they should use in unloading the cargo from the ship's hold?

A. No, sir.

Q. Who had charge of the direction of unloading the cargo from the ship's hold?

A. The officers of the ship.

Q. Would it have been any part of your duty to have indicated to the captain that he should put a hatch tender or signal man on the steamer Camino?

A. No, sir. [94]

Q. If you had indicated to the captain that he should put a hatch tender or signal man on the Camino, would your orders have been obeyed?

A. I couldn't give orders.

Q. Why not?

A. Because he was in charge of the ship; I had nothing to do with it.

Q. Were you familiar with the methods by which the steam beams were being unloaded at

(Testimony of E. P. Dosch.)

the time Mr. Barsch was hurt—the method by which they were being unloaded?

A. Only one way we usually handle them—with a bridle.

Q. Do you recall the situation of the winchman on the vessel?

A. What is that?

Q. Do you remember the winchman being on the vessel—on the steamer Camino?

A. Pretty hard thing. They change every trip or so.

Q. I don't mean, do you remember the particular man, but do you remember the system under which they worked?

A. Well, they only worked one way. Yes, sir, of course.

Q. What sort of winch did he operate?

A. Double set of winches.

Q. He operated double winches?

A. Yes.

Q. Now, what was the opportunity for the winch driver on the deck of the vessel to see the men at work who were receiving the cargo, as Mr. Barsch and his associates were?

Mr. Giltner: At what time?

Mr. Guthrie: That day, the 31st day of March.

Mr. Giltner: At the time of the accident. I object to his testifying—

Mr. Guthrie: Now, let him tell, the best he knows.

Mr. Giltner: I am objecting, and I make my

(Testimony of E. P. Dosch.)

objection to the Judge. I think it should be at the time of the accident.

Court: The time of the accident. [95]

Mr. Guthrie: Let him tell what they were doing.

Mr. Giltner: At the time of the accident.

Mr. Guthrie: He can't tell particular minutes.

Court: Go ahead. Ask if he saw the unloading of this cargo.

Q. You saw them unloading this cargo of steel beams, didn't you?

A. Not particularly at that time, I couldn't say. I saw them off and on. I am all over, and don't see every sling.

Q. From the position of the winchman of the vessel, could he have secured a view of the men working on the dock?

Court: If he knows he can testify.

Mr. Giltner: At the time of the accident.

Q. Go ahead. Could the winchman have seen the men working on the dock?

A. Yes.

Q. Was there anything to obstruct their view?

A. Nothing.

Q. What was the custom of giving signals to the winchman? Who gave them?

A. Usually the men that were landing the loads gave the signal, when he wants him to go back or pick it up.

Q. And the winchman receives his signal

(Testimony of E. P. Dosch.)

from men like Mr. Barsch, men doing that work like Mr. Barsch does?

A. Yes, sir.

Q. What is the custom usually in this port, with respect to unloading steam schooners of the type of the steamer Camino, as to whether or not a hatch tender is placed on the rail of the vessel?

A. Never use one unless the winchman can't see in the hold.

Q. Are you familiar with the scale of wage which longshoremen receive on the water front in the Port of Portland?

A. Yes, sir.

Q. Do you know what scale of pay men get who work wheat in this port?

A. Well, we always, if they work for a schooner—they get fifty-five cents for straight time, and eighty-two and a half cents an hour over [96] time, holidays and Sundays. If working under stevedores, get fifty-five cents straight, and get a dollar an hour straight time and over time. Every foreman working gang usually gets sixty cents straight time, and \$1.10 over time, and I think—I won't be sure of the over time.

Q. State whether or not it was the custom for longshoremen working in loading vessels here taking cargoes of wheat, to work on shifts over time, as well as during the regular shift of straight time.

A. A man that—

Mr. Giltner: I object to that as incompetent,

(Testimony of E. P. Dosch.)

immaterial and irrelevant, and has nothing to do with the issues in this case as to whether a man works over time or under time. What relation has it to this case?

Mr. Guthrie: If your Honor please, Mr. Barsch himself has testified to earning the sums of money which he has receipted for, and we wish to show he is able to do that, and is accustomed to it.

Mr. Giltner: You were asking about custom.

Mr. Guthrie: Damages is one of the questions here.

Mr. Giltner: I don't care. Go on and testify.

Q. Is it the custom for stevedores and long-shoremen to work over time, as well as during their straight shift?

A. Sure.

Q. Would it be possible for a man working straight time and over time to earn as much as \$9.60 in one day and night?

A. Yes, sir; depends on the length of time, of course, he puts in.

Q. Would it be possible for a man to work and earn as much as \$10.50 in one day?

Mr. Giltner: This is all asking for a conclusion of the witness, opinion of the witness. Besides that, this doesn't prove the custom of men working over time. It is not a question of custom anyway. I sincerely object to these questions.

Court: I think it should be confined to an in-

(Testimony of E. P. Dosch.)

quiry to what is [97] known as straight time—how many hours straight time.

Mr. Guthrie: These are the particular three days this man has testified impossible to earn the sums.

Q. Could a man working straight time, with some over time, earn as much as \$10.50 in one day?

A. If he put in the length of time, yes, sir.

Q. Could he earn as much as \$17.45 if he worked all night?

A. That is if he worked straight over time—over time—whether he could make it? That is, working for the stevedores or under their scale.

Q. With respect to placing hatch tenders on the vessels, Mr. Dosch, is it or is it not the custom to place hatch tenders on the coasters that come in and out of this port?

A. I have never seen one. Not on what they call a coastwise vessel.

Q. For how many years have you worked in this business?

A. Over 20 years.

Mr. Snow: What was the Camino?

Q. Was the Camino a coast vessel, or one going foreign?

A. Considered a coastwise vessel.

#### CROSS-EXAMINATION.

Questions by Mr. Giltner:

What time did you leave the dock the evening before the accident?

(Testimony of E. P. Dosch.)

A. Did I leave the dock?

Q. Yes.

A. I don't know.

Q. Do you know what time this accident happened?

A. No, sir.

Q. Do you know whether it was in the morning or evening?

A. No, sir.

Q. Don't you know what time you went to dinner that day?

A. On board the ship when ship in port, usually.

Q. Were you present when the accident happened? [98]

A. I didn't see it.

Q. Did you see the accident?

A. No, sir.

Q. Where were you when the accident happened?

A. I don't know.

Q. How long had you been gone from the dock when the accident happened?

A. I don't know.

Mr. Snow: He hasn't said he was gone from the dock.

Mr. Giltner: I am asking that question—he wasn't there.

Q. How long had you been gone from the dock, if you were gone from the dock, when the accident happened?

(Testimony of E. P. Dosch.)

A. I don't know. I don't know when it happened.

Q. Were you at the dock when the accident happened?

A. I don't know.

Q. When did you first hear of the accident?

A. I heard of it the next morning.

Q. If the accident had happened—if you had been at the dock when the accident happened, the probability is you would have been there to see about it, would you not?

A. Not necessarily. Not unless it was a serious accident.

Q. Now, this accident happened at half-past seven in the evening. Can't you tell the jury where you were at that time. Where were you? Do you know?

A. No, sir.

Q. Can you tell how high above the wharf this boat was at the time the accident happened?

A. No, sir.

Q. Could you tell what the winch tender was doing at the time the accident happened?

A. No, sir, any more than he was working on his winch, I suppose.

Q. Could you tell where these men were working on the dock at the time the accident happened? [99]

A. No, sir.

Q. You said, did you not, that the winch tender could see these men working on the dock?

(Testimony of E. P. Dosch.)

There was nothing to prevent him seeing them then?

A. Nothing that I know of, no, sir.

Q. You don't know whether there was or not, do you?

A. Nothing on any of these boats that you can't see the dock?

Q. Yes, but suppose the men were working up close to the ship, or working on the inside of the dock. Can the winch tender see them then?

A. Not inside of the dock, no, sir. If working on the fact of the dock, he can.

Q. In whose employ are you?

A. American-Hawaiian Steamship Company.

Q. Whom do you take your orders from?

A. Mr. Kennedy.

Q. Did you ever see any of these coastwise steamers loading at any other dock?

A. Yes, sir.

Q. At Inman-Poulsen dock?

A. Beg pardon?

Q. Have you ever seen any of them load at Inman-Poulsen dock?

A. No, sir.

Q. Do you mean to tell this jury that where the engineer cannot see the men who are working, that they don't employ signal men to signal to the engineer, and men working in the hold, or in a position where they can't see him?

A. I didn't say that, sir.

Q. Isn't it a fact, where the engineer cannot

(Testimony of E. P. Dosch.)

see the men working that it is the custom in this port to get a signal man, to have a signal man there who would signal between the man who operates the motive power, and the men in the hold, or in a position where the winchman can't see them? Isn't that a fact?

A. Yes, sir, often done. [100]

### REDIRECT EXAMINATION.

Questions by Mr. Guthrie:

As a matter of fact, Mr. Dosch, when you are engaged in overseeing the depositing of the cargo about the wharf, do you or do you not stay about the wharf all the time the steamer is unloading?

A. Always there; usually the last man to leave the dock.

Q. So that you were somewhere about the dock where the vessel was, all the time?

A. Yes, sir.

Q. The accident that happened to Mr. Barsch, was it or was it not reported to you that night?

A. I heard of it the next morning; told to me, but not very serious.

Mr. Giltner: I object to his stating what somebody told him.

Court: No, that wouldn't be competent.

Mr. Giltner: This man has been a witness before in a number of cases.

Q. So you heard nothing of the accident that night?

A. No, sir.

(Testimony of E. P. Dosch.)

Q. Now, Mr. Giltner suggested to you that hatch tenders were sometimes employed on vessels in the harbor of the Port of Portland, where it was impossible for the winch driver to see the men on the dock; did you have reference to coastwise vessels when you said sometimes they were?

A. Well, that depends on the conditions of loading and unloading.

Q. I say, do you mean that coastwise vessels employ hatch tenders?

A. I have never seen any personally.

Q. Do foreign-going vessels employ them sometimes?

A. They do, yes, sir.

Mr. Giltner: Now, if the Court please, I wish to move to strike out the testimony of this witness in regard to the custom of coastwise vessels. He has testified that he has never seen them, and he has not testified to custom, and he has not testified he knew, and I therefore move to strike out. He says he has never seen them, but he hasn't [101] testified that he knew what the custom was.

The Court: I understood him to say so on direct examination, he did know what the custom was.

Mr. Giltner: I beg pardon. He says he never saw them.

Mr. Snow: That is the way of proving custom.

Mr. Giltner: You must know what the custom is, not at one place, but at different places along

(Testimony of E. P. Dosch.)

the harbor here, as I understand the rules in regard to custom. Custom isn't one place.

Mr. Snow: Custom has to be uniform too.

Q. One question which perhaps I should have asked on direct examination, if your Honor please, I would like to ask. It is in evidence, Mr. Dosch, that this cargo was being taken out from the midships hatch. State whether or not the midships hatch on the steamer Camino is on the higher or lower parts of that vessel.

A. Midships hatch was called No. 2 hatch, was just forward of the pilot house.

Q. That would be higher or lower than the other parts of the vessel?

A. It would be lower than No. 1 and almost on a level with No. 3, very little difference.

Q. What is the deck plan of the steamer Camino? Is she scooped out as some schooners are, or not?

A. One deck full length.

Q. Practically one flush deck?

A. Yes sir, she has no walls. [102]

On the part of the defendant there was taken depositions of John G. Hoyt, A. A. Moran and R. H. Swayne, said depositions being taken upon interrogatories and cross-interrogatories furnished by the defendant and plaintiff respectively. The identical interrogatories and cross-interrogatories were propounded to each of the three witnesses.

(Depositions of John G. Hoyt et al.)

Mr. Hoyt testified on direct interrogatories that he resided in Oakland, California; that his occupation was that of a ship broker. That on or about the 31st of March, 1913, he was Vice-President of the defendant corporation, and familiar with the relationship of the defendant toward the steamship "Camino," and that such relationship was that of managing agent.

Mr. A. A. Moran testified on direct interrogatories that he was manager of the shipping department of the defendant, residing in San Francisco. On or about the 31st day of March, 1913, his official relation was the manager of the shipping department, and that at that time the defendant sustained the relation of managing agent for the Western Steam Navigation Company, owners of the "Camino." That Kennedy was not in the employ of Swayne & Hoyt on and before March 31, 1913.

Mr. R. H. Swayne on direct interrogatories testified that he was engaged in the shipping business, residing in Alameda, California. That on or about the 31st day of March, 1913, he was President of the defendant, and that at that time the defendant sustained the relationship of agent for the Western Steam Navigation Company, owners of the "Camino."

The foregoing testimony was adduced in reply to the first five direct interrogatories propounded to the witnesses. The sixth interrogatory was as follows: [Bill of Exceptions x1] [103]

(Depositions of John G. Hoyt et al.)

Let the witness state whether or not on or about the 31st day of March, 1913, the steamship "Camino," its tackle, apparel, furniture and machinery, were in the possession of or controlled by defendant Swayne & Hoyt, Inc., for the purpose of unloading structural iron or steel beams in the harbor of the Port of Portland, State of Oregon, and state whether or not on or about the 31st day of March, 1913, defendant employed plaintiff, Gustave Barsch, for the purpose of assisting in unloading structural iron or steel beams from the steamship "Camino" on the dock in the Port of Portland aforesaid.

To this interrogatory Mr. Hoyt testified that he did not know as to the first part of the interrogatory whether the "Camino" was in the port on March 31st, 1913, or not, but as to the latter portion of interrogatory he could testify "no."

Mr. Moran testified that on March 31st the "Camino" was not directly under the control of the defendant but was being handled by the agent of Western Steam Navigation Company at Portland, and the master of the vessel. As to the latter portion of interrogatory he testified that the defendant had no direct connection with the appointment of the plaintiff.

Mr. Swayne testified that as to the first portion of interrogatory, assuming the "Camino" to have been in port at that time, the defendant was not in control for the purpose stated in the interrogatory, and as to the latter portion of the inter-

(Depositions of John G. Hoyt et al.)

rogatory he stated that the defendant did not employ the plaintiff, and could not have employed him if he were to assume that plaintiff was employed, respecting which the witness had no personal knowledge.

The seventh interrogatory propounded to these witnesses inquired whether or not the defendant was engaged in the supervision of unloading the "Camino" on or about March 31st, 1913, or in any manner attended to the employment of stevedores or longshoremen, hatch tender, winchmen or [Bill of Exceptions x2] [104] signal men for the purpose of facilitating the unloading of the "Camino." To that inquiry Mr. Hoyt testified that the defendant was not engaged on that date in unloading the steamship "Camino." Mr. Moran testified that the defendant had no direct supervision at the time. Mr. Swayne testified that, assuming the "Camino" to have been in process of unloading at the time, the defendant did not and could not have anything to do with that operation.

The eighth interrogatory was propounded as follows:

"Let the witness state what person, firm or corporation was the owner or engaged in the work of unloading the steamship "Camino" in the harbor of Portland on or about the 31st day of March, 1913."

To which Mr. Hoyt replied:

"The Western Steam Navigation Company

(Depositions of John G. Hoyt et al.)

was the owner and was engaged in unloading the steamship through its agent.”

Mr. Moran replied:

“The Western Steam Navigation Company through its agent and the master of the vessel.”

Mr. Swayne replied:

“The owners, Western Steam Navigation Company through its agent.”

The interrogatory continued:

“And what person, firm or corporaotion assumed responsibility for the work of unloading the said steamship “Camino,” \* \* \*

To which Mr. Hoyt replied:

“The Western Steam Navigation Company was the owner of the vessel and was responsible through its agent, C. D. Kennedy.”

Mr. Moran replied:

“The Western Steam Navigation Company.”

Mr. Swayne replied:

“The Western Steam Navigation Company assumed the responsibility.” [Bill of Exceptions x3] [105]

The interrogatory continued:

And what person, firm or corporation employed the plaintiff in the work of assisting in the the unloading of structural iron or steel beams,

To which Mr. Hoyt replied:

I don't know; I presume it was C. D. Kennedy; I don't know.

Mr. Moran replied:

The Western Steam Navigation Company.

(Depositions of John G. Hoyt et al.)

Mr. Swayne replied:

Assuming that the plaintiff was employed he was employed by the Western Steam Navigation Company through its agent at Portland.

The interrogatory continued:

And let the witness state what person, firm or corporation employed hatch tenders, signal men, winch men and engineers in the operation of the unloading apparatus of the steamship "Camino" on or about the 31st day of March, 1913, and during the times complained of by plaintiff, at which time steamship "Camino" was berthed in the Willamette River, Port of Portland, State of Oregon.

To which Mr. Hoyt replied:

If she was there at that time I presume C. D. Kennedy was acting as agent of the Western Steam Navigation Company; I cannot say of my own knowledge.

Mr. Moran replied:

The Western Steam Navigation Company through the appointment by the master. At the present time I am not positive she was there at that date; it would be necessary for me to look up the facts; I presume she was.

Mr. Swayne replied:

Whatever employes described were employed by the Western Steam Navigation Company through its agent.

Cross-interrogatories propounded to these witnesses adduced that Mr. Hoyt was Vice-Presi-

(Depositions of John G. Hoyt et al.)

dent of the defendant about the 31st of March, 1913. That C. D. Kennedy was not in the employ of the defendant on or about that time. That the witness did not know personally [Bill of Exceptions x4] [106] whether Kennedy forwarded to the defendant a statement of the amounts of money paid out on account of unloading structural iron beams from the "Camino" at the time in question, nor did the witness know personally whether the defendant repaid Kennedy on account of money so paid out on behalf of the defendant company.

The witness answered negatively to the fifth cross-interrogatory as to whether or not it was a fact that Kennedy was acting as agent for the defendant in Portland, Oregon, in the employment of men for the purpose of unloading the "Camino" at the time in question.

Responding to the sixth cross-interrogatory the witness testified that defendant had no contract in writing with the owners of the steamship "Camino," and in response to the seventh the witness stated that he could not attach a copy of such contract since he had none.

The eighth cross-interrogatory was as follows:

"Is it not a fact that on and prior to March, 31, 1913, the defendant, Swayne & Hoyt, Inc., was the managing agent of the steamship "Camino," with power of directing the movements and operations of the officers and crew of said ship and of said ship?"

(Depositions of John G. Hoyt et al.)

To which the witness answered "Yes."

The identical cross-interrogatories propounded to Mr. Moran disclosed that Mr. Moran was manager of the shipping department of the defendant. That C. D. Kennedy was not employed by the defendant on and before March 31st, 1913. That Kennedy did send to the defendant a statement of the receipts and disbursements as the agent for the owners of the steamer, but not a statement for the account of Swayne & Hoyt. That the defendant made an adjustment on account of Western Steam Navigation Company with Kennedy, and that such was made as the managing agent for the company. [Bill of Exceptions x5] [107]

Responding to the fifth cross-interrogatory the witness stated that Kennedy was not acting as the agent for the defendant in the employment of men for the purpose of unloading the cargo in question.

Responding to the sixth and seventh cross-interrogatories the witness stated that defendant had no written contract with the owners of the steamship "Camino"—that there was no written contract.

In responding to the cross-interrogatory eight, identical with that propounded to the witness Hoyt, the witness testified: "Yes, they were."

Cross-interrogatories propounded to Mr. Swayne adduced the following:

That the witness was President of the defend-

(Depositions of John G. Hoyt et al.)

ant. That C. D. Kennedy was not in the employ of the defendant on and before March 31st, 1913, and before that time Kennedy did forward to the defendant a full statement of the transactions which were forwarded to Swayne & Hoyt as agent for the owners, and that as agent for the owners the defendant settled accounts with Kennedy from time to time, and that he believed the particular account for unloading steel beams from the "Camino" on or about March 31st, 1913, was settled in that way.

Responding to the fifth cross-interrogatory the witness testified that Kennedy was not acting as agent for the defendant in Portland, Oregon, at the time in question.

Responding to the sixth and seventh cross-interrogatories the witness stated no written contract existed between the defendant and the owners of the [108] "Camino," and that he could not attach a copy to his deposition.

Responding to cross-interrogatory eight, identical with that propounded to the witness Hoyt, Mr. Swayne answered:

"As agent they directed the master and other officers from time to time."

Other evidence disclosed that shipments of wheat from the Port of Portland began in the early Fall of each year and were practically completed by the following Spring, or early Summer. It was shown that plaintiff worked during a number of weeks in the Fall and Winter of 1913, and

(Depositions of John G. Hoyt et al.)

in 1914 for Brown & McCabe and The McCabe Company, Inc., who were stevedores at the Port of Portland. Payrolls were introduced bearing plaintiff's signature, aggregating \$350.00 or more. On several days plaintiff had earned large sums of money and on the 27th of December, 1913, earned \$17.45.

Physicians and others testified as to the nature, character, and seriousness of the injury received by the plaintiff; the evidence on that subject was conflicting. Radiograph plates taken of plaintiff's right and left knee were introduced in evidence as Defendant's Exhibits "D" and "E" respectively.

All of the evidence having been received the cause was argued to the jury by the attorneys for the respective parties and in the course of the presentation of law to the court the defendant requested the court to give the following instruction to the jury:

"The jury is instructed to find for defendant."

But the giving of the foregoing instruction the court refused, to which refusal the defendant excepted on the ground that the instruction should be given and under the evidence in [Bill of Exceptions x7] [109] the cause the defendant was not liable, the exception being then and there allowed by the court.

Thereupon likewise the defendant among

(Request instructions and exception.)

other instructions requested the following instruction to be given to the jury: [110]

“It is charged in the plaintiff’s complaint that the accident which brought about the alleged injuries to the plaintiff arose by the action of the foreman of the defendant, who it is said carelessly and negligently, and in his haste to unload the ship, gave the signal to the engineer to go ahead before this foreman was notified by the plaintiff, or his co-workmen who were handling the load on the truck, to do so, and that the engineer operating the winch on the vessel, without notice to the plaintiff, obeyed this signal of the foreman, in consequence of which plaintiff was injured. I charge the jury that the foreman in question, and the engineer operating the winch on the vessel, were fellow servants of the plaintiff, and for any negligence of the foreman in prematurely giving, if he did prematurely give, the signal to the winch man, the plaintiff cannot recover in this action.”

But to give the foregoing instruction the court then and there refused, to which refusal the defendant then and there excepted in open court, the exception being allowed, the ground of the exception being that the Employers Liability Law of the State of Oregon had no application to the loading or unloading of vessels coming in and out of the City of Portland and engaged in interstate commerce and that the foreman in question,

(Request instructions and exception.)

with the winchman, were under the law fellow servants of the plaintiff.

Thereupon also the defendant requested that the following instruction be given to the jury:

“The complaint charges among other things that by means of the manner in which the work of the unloading of the steamer “Camino” was conducted, and the sudden and unexpected raising of the beam which the plaintiff with other workmen was engaged in landing from the vessel, that plaintiff was struck on the knee and was permanently injured and bruised in the knee joint and in the tendons and ligaments thereof and in the bone of the knee. I charge the jury that the burden of proof is upon the plaintiff to establish by a preponderance of the evidence the permanent injuries claimed, and unless the jury can say by a fair preponderance of all of the evidence in the case that there is a permanent injury, then the jury should conclude that the plaintiff was not permanently injured, and if you find for the plaintiff no damages should be returned for any permanent injury.”

But to give the foregoing instruction, as requested, the court then and there refused, giving to the jury an [6 Bill of Exceptions] [111] instruction on the question, but in modified form, and to the refusal of the court to so instruct, as requested, the defendant then and there in open court excepted on the ground that the instruction correctly stated the law and should have been

(Request instructions and exception.)

given by the court and should not have been modified as the court modified the instruction, the exception being then and there by the court allowed.

The foregoing instructions requested and the exceptions taken were requested and taken and the exceptions allowed before the jury retired to consider upon their verdict.

The court thereupon instructed the jury as follows:

“This action is brought by Mr. Barsch against Swayne & Hoyt to recover damages for a personal injury which he alleges to have suffered on the 31st day of March, 1913, while engaged in assisting in discharging a cargo from the Steamer “Camino,” which injury he charges was due to the negligence of the defendant, first, in the foreman giving an improper signal to the winch engineer. Second, in failing and neglecting to establish a system of signals or means of communication between the workmen and the engineer. And third in failing to station what is referred to in the testimony as a hatch tender to give such signals. The defendant, Swain & Hoyt deny responsibility entirely. They deny, in the first place that they were in charge of the work, or that they are responsible in any way for the accident occurring to him.

Now, before it becomes necessary for you to consider the question of negligence it will be im-

(Instructions given to Jury.)

portant for you to determine whether or not Swain & Hoyt are liable for this accident, if anybody is liable for it. It is not claimed, nor is there any evidence tending to show that Swain & Hoyt owned the steamer "Camino." There is no evidence nor is it claimed that Swain & Hoyt were the charterers of the vessel. The only testimony in reference to that matter is that they are what is referred to and denominated as managing agents, that is that they were acting for the owners. Now a managing agent is one who is entrusted with the general supervision and active direction of another one's business, and in shipping parlance it means one who represents the owner or owners of a vessel, in directing the shipment of cargo, the movement of the vessel and the general operation of the vessel or vessels which may belong to these owners. The managing agent in such case operates and directs the movement of the cargo and vessels on account of the owners, while the owners on the other hand operate the vessel insofar as the navigation is concerned through the officers and crew of the vessel. Now, the fact, if it is a fact, that Swain & Hoyt were the managing agents of this vessel would not of itself make them liable for the [7 Bill of Exceptions] [112] injury that occurred to some one working on the vessel, nor would the fact that as such managing agents they employed the plaintiff or employed the other officers or employes of the vessel make them personally liable

(Instructions given to Jury.)

for the negligence of these officers or agents. Let me illustrate: If Mr. Hall was the managing agent of a mill company in his town, and as such managing agent should employ the men at work in the mill, they would not be working for him because of that fact, but they would be working for the mill company for whom he was the agent, and for whom he acted, and if in engaging the men he should neglect and fail to disclose to them the principal for whom he was acting, he would probably become liable personally for their wages, but they would nevertheless be the employes of the mill company for whom he himself was agent and for whom he was acting, *and for whom he was acting*, and he would not be responsible for an injury that occurred in the mill through the negligence of the owners and the parties who were operating it. He could only be held liable for negligence when he himself, upon his own account, was in charge of the mill, and did some negligent thing that resulted in the accident or injury to another employe. So, in this case, if Swain & Hoyt were the mere managing agents of this boat, and acting as such for their principal employed the men that worked on the boat, and these men after they had been so employed and while they were at work on the boat were careless and negligent and through their carelessness and negligence some one was injured, the owners of the boat would be responsible under some circumstances under the

(Instructions given to Jury.)

maritime law, but Messrs. Swain & Hoyt would not be simply because they were the managing agents. Before they could be held responsible for an accident occurring on the boat, it must appear that they themselves, on their own account, were in charge of the boat at that time, operating it and directing the men and the course of procedure, and that through some negligent act of theirs the injury occurred, and unless that appears in this case, then there is no liability against Swain & Hoyt, whatever liability there may be against other parties.

Now, there has been some testimony in this case indicating that Swain & Hoyt may have had some freight on this vessel. That would not make them liable for an injury occurring on the vessel any more than it would make any other consignee, or any other man that had freight. It is a circumstance in the testimony tending to show the relation that existed between these parties. Again there has been some testimony about an interview between Mr. Barch and Mr. Moran, and Swain & Hoyt in San Francisco, and an examination that was made of him by a physician, at the request or direction of Swain & Hoyt, and that Mr. Kennedy, the local man here in Portland, whom plaintiff claims to be the agent of Swain & Hoyt, reported this accident to Swain & Hoyt. Now, that may be consistent with liability on the part of Swain & Hoyt but not inconsistent with non-liability, because if they were the man-

(Instructions given to Jury.)

aging agents representing the owners, the natural person to whom any one having a claim against the owners of the vessel would go would be to the managing agent, and that is Swain & Hoyt; the natural person to whom Kennedy would make his report would be the managing [8 Bill of Exceptions] [113] agent, the man who represented the vessel, and so that fact alone would not justify a recovery in this case. They are circumstances for you to consider in determining whether or not Swain & Hoyt were in actual control of this vessel, operating it, and responsible for the conduct of the men engaged therein, but it would not be sufficient to justify a recovery in this case.

Now, the plaintiff alleges negligence on the part of Swain and Hoyt on account of defendant's methods of handling and unloading the cargo of the Camino. You are instructed, as I have said, that if they were the mere managing agents acting for the owners and not for themselves, there is no legal liability against them in this case, unless you should find from the testimony that they were, on their own account, in charge of this vessel at the time of this accident or controlling the movement of these men for themselves and not for their principals, and upon this question the burden of proof is upon the plaintiff to prove that defendant, Swain & Hoyt, was not only the employer of the plaintiff, but that they were in charge and in control of the

(Instructions given to Jury.)

method of handling the cargo, and unless he has satisfied you by a preponderance of the proof upon this question, then you have no further concern with this litigation. It would simply be a case where the liability, if there is any liability, is on behalf of some one else other than the defendant in this case.

If, however, you should find that Swain & Hoyt were in control of this vessel at the time of this accident, on their own account, and that by reason of that fact they are liable for this injury, if there was an injury, and if anybody was injured, then it will be necessary for you to consider the other phase of this case.

The law is that an employer is required to exercise reasonable care to provide his employes with a reasonably safe place in which to work, and the statute of this state provides that all machinery, other than that operated by hand power shall, whenever necessary for the safety of persons employed in or about the same, or for the safety of the general public, be provided with a system of communication by means of signals so that at all times there may be prompt and efficient communication between employes or other persons and the operator of the motive power.

So that if you believe from the testimony that at the time of the plaintiff's accident, or the injury received by him, that it was necessary for the safety of the persons employed in or about these boats that a system of communication by

(Instructions given to Jury.)

means of signals should have been provided so that the winchman could have been advised of the movements of the men who were engaged in discharging and storing the cargo, and that the parties in charge of the boat and who are responsible for this injury failed and neglected to provide such a signal, and that failure was the proximate cause of the plaintiff's injury, then in that event it would be negligence within the meaning of this statute, and would entitle the plaintiff to recover. But, as I have said, before you can find the defendant, Swain & Hoyt, liable on this account, you must find by a preponderance of the proof that it was in charge of the unloading operations of the steamer; that it had authority to establish a system of communication and to place a hatch tender on the vessel, notwithstanding the directions of the master, first officer or other officers of the steamer. [9 Bill of Exceptions] [114]

Now, there is no evidence in this case as I recall it, that the master or officers of this vessel were employed by Swain & Hoyt on their own account. There is some testimony indicating that they were employed by this firm, but unless there is testimony tending to show that they were employed on account of Swain & Hoyt, the inference would be, since they were agents for the owners, that they were employing them for the owners of the vessel, and that they became the

(Instructions given to Jury.)

agents and employes of the owners of the vessel and not Swain & Hoyt.

Now, there is some evidence here tending to show that this accident occurred through a signal given by the mate of the vessel—I think one of the witnesses testified that the mate gave the signal, and it is indeed charged in the complaint that it was done by the foreman—and it was a hasty signal and by reason of that fact the winchman raised this iron beam at a time when he should not have done so, and caused the injury to the plaintiff. Now, if Swain & Hoyt were in charge of the boat at the time, not as agents for the owners but on their own account, and their employes or those over whom they had charge,—the foreman if they had charge of the foreman—through negligence gave a signal at a time when they should not have given a signal, and on this account the injury occurred, then they would be responsible for it under the Oregon statute, because it makes the foreman in such case the representative of the master.

Now, I think this covers all the questions of law involved in this case except some general instructions and the rule as to measure of damages.

In a case of this kind an employer is not an insurer. He doesn't guarantee that his employe shall not be injured nor is the mere proof of an injury or an accident proof of negligence, but before a plaintiff can recover in an action of this kind he must show by a preponderance of the

(Instructions given to Jury.)

evidence that his injury was due to the negligence of his employer, and negligence means, in that connection, the want of reasonable care, the want of such care and caution as a reasonably prudent man would have exercised under the same circumstances. That is the definition and guide in this case.

Now if you find that the plaintiff is entitled to recover in this case, it will be necessary for you to determine the amount of his damages. Upon that question there is no fixed rule, no rule of law the court can announce to you; each case depends upon its own facts. The purpose to be accomplished is to arrive at a monetary consideration as nearly as possible sufficient to cover the injury. It is a difficult matter to do and there is no standard by which it can be determined. In an action concerning matters that have a market value, there is a standard by which we can ascertain the amount of recovery, but when it comes to a personal injury there are no such standards, and there is no definite rule that the court can lay down for the guidance or determination of the jury. It is, after all, left to the good judgment and sound discretion of a jury. In estimating the damages, you should consider the age of the plaintiff; his expectancy of life which is said to be 21 years, or whatever is stated in the complaint; the pain and suffering that he endures, if any, on account of this accident; his impaired earning capacity on account thereof; the length

(Instructions given to Jury.)

of time he was out of employment due to the injury; the effect upon his future earning capacity if any, and the effect upon his health, if it is impaired by [10 Bill of Exceptions] [115] reason of the injury; his ability to attend to his own affairs and pursue his ordinary calling, and all these circumstances, and then determine what amount of damages he is entitled to not exceeding the amount specified in the complaint which is ten thousand dollars.

Now the complaint charges that by reason of being struck by this iron he was permanently injured and bruised in the knee joint. Upon the question of the permanency of the injury the burden of proof is upon the plaintiff to establish by a preponderance of the evidence, and unless you can say by a fair preponderance of all the evidence that there is a permanent injury, then you should conclude that he was not permanently injured, that is that the injury was not a permanent one, and consider that in estimating the amount of damages.

You are the exclusive judges of all questions of fact in this case, and you are the exclusive judges of the credibility of the witnesses. Every witness is presumed to speak the truth. You have heard them testify and it is for you to say what weight is to be given to their testimony, and if at any time during the trial the court intimated its views upon any question of fact in this case, or upon what a witness testified or his credibility,

(Instructions given to Jury.)

you are to disregard it unless it conforms to your own views, for these questions are exclusively for you and you must determine them upon your own responsibility and not upon that of any one else.

Mr. Giltner: If the court please, I object to the instructions given by the court to the jury here about the liability of Swain & Hoyt if the accident happened on the boat. There is no testimony to show that any accident happened on this boat; it happened on the wharf.

Court: I will correct that. If I said happening on the boat I referred to the accident charged in the complaint and the foundation of this action.

And it is now certified by the undersigned United States District Judge for the District of Oregon, sitting at the trial of this action, that the foregoing bill of exceptions contains substantially all of the evidence offered and received at the trial, with the exception of the evidence as to the extent, nature, and character of the plaintiff's injuries and the damages sustained by him and upon these questions the evidence was conflicting. The foregoing bill correctly states the several exceptions taken and allowed in behalf of defendant and inasmuch as the foregoing is not fully of record in this cause I have settled and certified this bill of exceptions and order that the

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same be filed and spread of record in the cause  
as of the date of the judgment.

Dated August 25th, 1914.

R. S. Bean,  
United States District Judge,  
District of Oregon.

[11 Bill of Exceptions] [116]

UNITED STATES OF AMERICA, }  
District of Oregon. } ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that I have prepared the foregoing transcript of record upon Writ of Error in the case of Gustav Barsch, Plaintiff and Defendant in Error against Swayne & Hoyt, Inc., a corporation, Defendant and Plaintiff in Error, in accordance with the law and the rules of this Court, and the stipulation signed by counsel for the respective parties and filed in said cause, and that the said transcript is a full, true and correct transcript of the proceedings had in said Court, in accordance with the said stipulation, as the same appear of record and on file at my office and in my custody. And I further certify that the cost of the foregoing transcript is \$....., for Clerk's fees for preparing said transcript, and \$....., for printing said transcript, and that the same has been paid by the said Plaintiff in Error.

In testimony whereof I hereunto set my hand and affix the seal of said Court, at Portland, in said District, on the .... day of ....., 1914.

.....  
Clerk.

